

IN THE RECORDS OF THE CIRCUIT COURT
FOR MONTGOMERY COUNTY, STATE OF MARYLAND,
AMONG OTHER PROCEEDINGS
IS THE FOLLOWING, TO WIT:

**EXHIBIT
1 (Part A)**

CASE SUMMARY

CASE NO. 485899V

**MARYLAND SHALL ISSUE INC, et al. vs.
MONTGOMERY COUNTY MARYLAND**

§
§
§
§

Location: **Montgomery Circuit Court**
Filed on: **05/28/2021**

CASE INFORMATION

File Date 05/28/2021

Case Type: Tort - Other

Cause of Action
Violation

Description/Remedy
Action
VIOLATION

Case Status: 02/18/2022 Reopened

File Date 05/28/2021

Cause of Action
Violation

Description/Remedy
Action
VIOLATION

File Date 05/28/2021

Cause of Action
Violation

Description/Remedy
Action
VIOLATION

File Date 05/28/2021

Cause of Action
Violation

Description/Remedy
Action
VIOLATION

DATE

CASE ASSIGNMENT

Current Case Assignment

Case Number 485899V
Court Montgomery Circuit Court
Date Assigned 05/28/2021

PARTY INFORMATION

Plaintiff

DAVID, NANCY
24129 PECAN GROVE LANE
GAITHERSBURG, MD 20882

Attorneys
Pennak, Mark William
Retained
301-873-3671(W)

DAVID, RONALD
24129 PECAN GROVE LANE
GAITHERSBURG, MD 20882

Pennak, Mark William
Retained
301-873-3671(W)

EDGAR, JOSHUA
8416 FLOWER HILL TER
GAITHERSBURG, MD 20879

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301-873-3671(W)

ENGAGE ARMAMENT LLC
701 E GUDE DR STE 101
ROCKVILLE, MD 20850

Pennak, Mark William
Retained
301-873-3671(W)

FERRELL, BRANDON
40 MOUNTAIN LAUREL CT
GAITHERSBURG, MD 20879

Pennak, Mark William
Retained
301-873-3671(W)

ICE FIREARMS & DEFENSIVE TRAINING LLC
24129 PECAN GROVE LANE
GAITHERSBURG, MD 20882

Pennak, Mark William
Retained
301-873-3671(W)

CASE SUMMARY**CASE No. 485899V**

MARYLAND SHALL ISSUE INC
 9613 HARFORD RD STE C 1015
 PARKVILLE, MD 21234-2150

Pennak, Mark William
Retained
 301-873-3671(W)

RABANALES, CARLOS
 7727 GREEN VALLEY RD
 FREDERICK, MD 21701

Pennak, Mark William
Retained
 301-873-3671(W)

RAYMOND, ANDREW
 14819 POPLAR HILL RD
 GERMANTOWN, MD 20874

Pennak, Mark William
Retained
 301-873-3671(W)




WEAVER, DERYCK
 8712 LOWELL STREET
 BETHESDA, MD 20817

Pennak, Mark William
Retained
 301-873-3671(W)

Defendant

MONTGOMERY COUNTY MARYLAND
 101 MONROE STREET
 ROCKVILLE, MD 20850

Lattner, Edward B.
Retained
 240-777-6700(W)
KANE, PATRICIA L
Retained
 240-777-6743(W)
KANE, PATRICIA L
Retained
 240-777-6743(W)
O'HARA, SEAN CHARLES
Retained
 240-777-6764(W)

| DATE | EVENTS & ORDERS OF THE COURT | INDEX |
|------------|---|-------|
| 05/28/2021 | Cause of Action Violation (VIOLATION) Action Type Action | |
| 05/28/2021 | Cause of Action Violation (VIOLATION) Action Type Action | |
| 05/28/2021 | Cause of Action Violation (VIOLATION) Action Type Action | |
| 05/28/2021 | Cause of Action Violation (VIOLATION) Action Type Action | |
| 05/28/2021 |  Complaint / Petition <i>Type: Docket;</i> <i>Code: 366;</i> <i>Filed by: P Plaintiff;</i> <i>Text: PLAINTIFFS' VERIFIED COMPLAINT FOR DECLARATORY AND EQUITABLE RELIEF AND FOR COMPENSATORY DAMAGES, NOMINAL DAMAGES, PUNITIVE DAMAGES AND ATTORNEY'S FEES, JURY DEMAND AND ATTACHMENTS, FILED.;</i> <i>User Name: MARIANNB</i> | |
| 05/28/2021 |  Information Sheet Filed <i>Type: Docket;</i> <i>Code: 114;</i> <i>Filed by: P Plaintiff;</i> <i>Text: PLAINTIFFS' INFORMATION SHEET, FILED.;</i> <i>User Name: MARIANNB</i> | |
| 06/02/2021 |  Scheduling Order (Judicial Officer: Greenberg, Robert A.) <i>Type: Docket;</i> <i>Code: 181;</i> <i>Filed by: C Court;</i> <i>Text: SCHEDULING ORDER (GREENBERG, J.) TRACK 2, ENTERED. (COPIES MAILED);</i> | |

CASE SUMMARY

CASE NO. 485899V

User Name: MARIANNB

06/02/2021

 Notice of Filing Record

Type: Docket;
Code: 836;
Filed by: C Court;
Text: NOTICE SENT GIVING NEW CASE NUMBER TO ALL PARTIES.;
User Name: MARIANNB

06/02/2021

 Summons Issued (Conversion)

Type: Docket;
Code: 248;
Filed by: C Court;
Text: ONE 30 DAY SUMMONS ISSUED FOR PERSONAL SERVICE AND HANDED TO ATTORNEY.;
User Name: MARIANNB

06/02/2021


Return of Service

MONTGOMERY COUNTY MARYLAND

Served: 06/10/2021

Days: 30

06/03/2021

 Hearing Notice Issued

Type: Docket;
Code: 884;
Filed by: C Court;
Text: NOTICE OF EXISTING SCHEDULE SENT TO MARK W. PENNAK, ESQ., FILED.;
User Name: WILLIAML

06/16/2021

 Motion for Summary Judgment

Type: Motion;
Code: 38;
Status:
Filed by: P Plaintiff;
Text: PLAINTIFFS' EMERGENCY MOTION FOR PARTIAL SUMMARY JUDGMENT, EXPEDITED HEARING REQUESTED, SUPPLEMENTAL DECLARATIONS, MEMORANDUM AND ATTACHMENTS, FILED. (PROPOSED ORDER NOT PROVIDED);
User Name: EVELYND

06/16/2021

 Affidavit - Service


Type: Docket;
Code: 188;
Filed by: P Plaintiff;
Text: AFFIDAVIT OF SERVICE BY MAILING ON NOTICE AND VERIFIED COMPLAINT AS TO THE HONORABLE BRIAN E. FROSH ON 06/16/2021, FILED.;
User Name: EVELYND

06/17/2021

 Return of Service - Served

Type: Docket;
Code: 752;
Filed by: C Court;
Text: SHERIFF'S RETURN ON SUMMONS: SERVED AS TO MONTGOMERY COUNTY MARYLAND W/S/O REBECCA RIECK ON 06/10/2021, FILED.;
User Name: EVELYND







06/24/2021

 Notice of Hearing / Trial - Issued

Type: Docket;
Code: 437;
Filed by: C Court;
Text: NOTICE OF HEARING DATE FILED AND MAILED. (HEARING DATE: 07/15/2021)

CASE SUMMARY

CASE No. 485899V


| | |
|------------|---|
| | (LP); User Name: PASTORAW |
| 06/25/2021 |  Certified Copy Type: Docket; Code: 541; Filed by: D Defendant; Text: CERTIFIED COPIES ISSUED AND HANDED TO THERESA HAMPLE.; User Name: CRYSTALT |
| 07/13/2021 |  Notice of Removal to U.S. District Court Type: Docket; Code: 575; Filed by: D Defendant; Text: NOTICE OF REMOVAL TO FEDERAL U.S. DISTRICT COURT, FILED. CASE CLOSED. (LP) (FILED BY EMAIL); User Name: ROXANAG |
| 07/13/2021 | Converted Judgment Event Type Comment (Docket Code: 575 NOTICE, FILING NOTICE OF REMOVAL US DIST CT) |
| 07/15/2021 | CANCELED Hearing - Motion for Summary Judgment (10:00 AM) (Judicial Officer: Maloney, John M.) Event Code: SJ - PARTIAL SUMMARY JUDGMENT Remarks: CNCL, TRANSFERRED AORemarks: EMERGENCY(ADD-ON) Free Text: SUMMARY JUDGMENT Case Transferred |
| 10/24/2021 | Converted Event Type |
| 11/12/2021 | CANCELED Hearing - Pretrial/Status (10:30 AM) (Judicial Officer: Bonifant, James A) Event Code: ST - STATUS/PRETRIAL HRG. Remarks: CNCL, TRANSFERRED Free Text: STATUS/PRETRIAL HRG. Case Transferred |
| 02/08/2022 |  Attorney Appearance - No Fee Counsel: Attorney Pennak, Mark William For: Attorney Pennak, Mark William; Plaintiff MARYLAND SHALL ISSUE INC; Plaintiff ENGAGE ARMAMENT LLC; Plaintiff RAYMOND, ANDREW; Plaintiff RABANALES, CARLOS; Plaintiff FERRELL, BRANDON; Plaintiff WEAVER, DERYCK; Plaintiff EDGAR, JOSHUA; Plaintiff ICE FIREARMS & DEFENSIVE TRAINING LLC; Plaintiff DAVID, RONALD; Plaintiff DAVID, NANCY |
| 02/09/2022 |  Attorney Appearance - No Fee Counsel: Attorney O'HARA, SEAN CHARLES; Attorney KANE, PATRICIA L; Attorney Lattner, Edward B. For: Defendant MONTGOMERY COUNTY MARYLAND |
| 02/18/2022 |  Case Transferred from Other Jurisdiction United States District Court Pln & Def: Plaintiff MARYLAND SHALL ISSUE INC; Plaintiff ENGAGE ARMAMENT LLC; Plaintiff RAYMOND, ANDREW; Plaintiff RABANALES, CARLOS; Plaintiff FERRELL, BRANDON; Plaintiff WEAVER, DERYCK; Plaintiff EDGAR, JOSHUA; Plaintiff ICE FIREARMS & DEFENSIVE TRAINING LLC; Plaintiff DAVID, RONALD; Plaintiff DAVID, NANCY; Defendant MONTGOMERY COUNTY MARYLAND |
| 02/18/2022 |  Certified Copy |

CASE SUMMARY

CASE NO. 485899V

U.S. District Court Order remanding case back to Montgomery County Circuit Court


02/18/2022

 Certified Copy
of Docket Entries from U.S. District Court


02/22/2022

 Memorandum
IN SUPPORT OF DEFENDANT'S MOTION TO DISMISS OR, ALTERNATIVELY, FOR SUMMARY JUDGMENT


02/22/2022

 Motion / Request - To Dismiss
DEFENDANT'S MOTION TO DISMISS OR, ALTERNATIVELY, FOR SUMMARY JUDGMENT


02/22/2022

 Supporting Exhibit
Ex. A - Bill 4-21

02/22/2022

 Supporting Exhibit
Ex. B - Bill 4-21 Action Packet

02/22/2022

 Supporting Exhibit
Ex. C - FTB Bulletin 14-01


02/22/2022

 Supporting Exhibit
Ex. D - MCC Chapter 57


02/22/2022

 Supporting Exhibit
Ex. E - 1997 LMC Ch. 14 (Bill 4-97)


02/22/2022

 Supporting Exhibit
Ex. F - MCC 103-6 (1966)

02/22/2022

 Supporting Exhibit
Ex. G - MCC 95-6 (1955)

02/22/2022

 Motion/Request
TO EXCEED PAGE LIMITATION ON MOTION TO DISMISS OR, ALTERNATIVELY, FOR SUMMARY JUDGMENT
Filed by: Defendant MONTGOMERY COUNTY MARYLAND


02/22/2022

 Opposition
TO PLAINTIFFS MOTION FOR PARTIAL SUMMARY JUDGMENT
Filed by:: Defendant MONTGOMERY COUNTY MARYLAND


02/22/2022

 Memorandum
MEMORANDUM IN SUPPORT OF DEFENDANT'S OPPOSITION TO PLAINTIFFS MOTION FOR PARTIAL SUMMARY JUDGMENT

02/22/2022














 Supporting Exhibit
Ex. A - Bill 4-21

02/22/2022

 Supporting Exhibit
Ex. B - Bill 4-21 Action Packet













CASE SUMMARY

CASE NO. 485899V

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| 02/22/2022 |  Supporting Exhibit <i>Ex. C - FTB Bulletin 14-01</i> |
| 02/22/2022 |  Supporting Exhibit <i>Ex. D - MCC Chapter 57</i> |
| 02/22/2022 |  Supporting Exhibit <i>Ex. E - 1997 LMC Ch. 14 (Bill 4-97)</i> |
| 02/22/2022 |  Supporting Exhibit <i>Ex. F - MCC 103-6 (1966)</i> |
| 02/22/2022 |  Supporting Exhibit <i>Ex. G - MCC 95-6 (1955)</i> |
| 02/22/2022 |  Motion/Request <i>TO EXCEED PAGE LIMITATION ON OPPOSITION TO PLAINTIFFS MOTION FOR PARTIAL SUMMARY JUDGMENT</i> Filed by: Defendant MONTGOMERY COUNTY MARYLAND |
| 02/24/2022 |  Notice Issued <i>Transfer of Orignial Record Back from Another Court</i> Issued to: Attorney O'HARA, SEAN CHARLES; Attorney KANE, PATRICIA L; Attorney Pennak, Mark William |
| 02/25/2022 |  Scheduling Order (Judicial Officer: Bonifant, James A) <i>TRACK 2</i> |
| 02/28/2022 |  Court Order Entered (Judicial Officer: Bonifant, James A) <i>Track 2 Scheduling Order</i> Party: Attorney O'HARA, SEAN CHARLES; Attorney KANE, PATRICIA L; Attorney Lattner, Edward B.; Attorney Pennak, Mark William |
| 03/07/2022 |  Opposition <i>TO MOTION FOR SUMMARY JUDGMENT AND TO DISMISS AND EXPEDITED HEARING REQUESTED</i> Filed by:: Plaintiff MARYLAND SHALL ISSUE INC; Plaintiff ENGAGE ARMAMENT LLC; Plaintiff RABANALES, CARLOS; Plaintiff FERRELL, BRANDON; Plaintiff EDGAR, JOSHUA; Plaintiff ICE FIREARMS & DEFENSIVE TRAINING LLC; Plaintiff DAVID, RONALD; Plaintiff DAVID, NANCY |
| 03/07/2022 |  Motion/Request <i>TO EXCEED PAGE LIMITATION ON THEIR OPPOSITION TO MOTION TO DISMISS</i> Filed by: Plaintiff MARYLAND SHALL ISSUE INC; Plaintiff ENGAGE ARMAMENT LLC; Plaintiff RAYMOND, ANDREW; Plaintiff RABANALES, CARLOS; Plaintiff FERRELL, BRANDON; Plaintiff WEAVER, DERYCK; Plaintiff EDGAR, JOSHUA; Plaintiff ICE FIREARMS & DEFENSIVE TRAINING LLC; Plaintiff DAVID, RONALD; Plaintiff DAVID, NANCY |
| 03/07/2022 |  Supporting Exhibit <i>Exhibit A to Plaintiffs' Opposition</i> |
| 03/07/2022 |  Supporting Exhibit <i>Exhibit B to Plaintiffs' Opposition</i> |

CASE SUMMARY

CASE NO. 485899V

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|------------|---|
| 03/07/2022 |  Supporting Exhibit <i>Exhibit C to Plaintiffs' Opposition</i> |
| 03/07/2022 |  Supporting Exhibit <i>Exhibit B (#2) to Plaintiffs' Opposition</i> |
| 03/07/2022 |  Supporting Exhibit <i>Exhibit C (#2) to Plaintiffs' Opposition</i> |
| 03/10/2022 |  Motion/Request <i>Combined filing of previously filed material on Plaintiff's motion to exceed page limit and Opposition to Def. Motion for Summary Judgment</i> Filed by: Plaintiff MARYLAND SHALL ISSUE INC; Plaintiff ENGAGE ARMAMENT LLC; Plaintiff RAYMOND, ANDREW; Plaintiff RABANALES, CARLOS; Plaintiff FERRELL, BRANDON; Plaintiff WEAVER, DERYCK; Plaintiff EDGAR, JOSHUA; Plaintiff ICE FIREARMS & DEFENSIVE TRAINING LLC; Plaintiff DAVID, RONALD; Plaintiff DAVID, NANCY |
| 04/14/2022 |  Motion to Expedite <i>Motion to Expedite Hearing and Decision and Supp. Memo. on Enactment of SB 387 and HB 425 Into Law</i> Filed by: Plaintiff MARYLAND SHALL ISSUE INC; Plaintiff ENGAGE ARMAMENT LLC; Plaintiff RAYMOND, ANDREW; Plaintiff RABANALES, CARLOS; Plaintiff FERRELL, BRANDON; Plaintiff WEAVER, DERYCK; Plaintiff EDGAR, JOSHUA; Plaintiff ICE FIREARMS & DEFENSIVE TRAINING LLC; Plaintiff DAVID, RONALD; Plaintiff DAVID, NANCY |
| 04/14/2022 |  Supporting Exhibit <i>House Bill 425 Enrolled</i> |
| 04/20/2022 |  Order - Motion/Request Moot (Judicial Officer: Cho, Jeannie E.) Notices To:: Attorney O'HARA, SEAN CHARLES; Attorney KANE, PATRICIA L; Attorney Lattner, Edward B.; Attorney Pennak, Mark William |
| 04/20/2022 | Hearing Notice Issued <i>HEARING DATE: 05/23/2022 AT 10:00 AM</i> |
| 04/20/2022 |  Writ /Summons/Pleading - Electronic Service <i>Order to expedite hearing and decision #9457404</i> Sent to:: Attorney O'HARA, SEAN CHARLES; Attorney KANE, PATRICIA L; Attorney Lattner, Edward B.; Attorney Pennak, Mark William |
| 04/20/2022 |  Writ /Summons/Pleading - Electronic Service <i>Notice of Hearing Date - MARK WILLIAM PENNAK -Envelope # 9460990</i> Sent to:: Attorney Pennak, Mark William |
| 04/20/2022 |  Writ /Summons/Pleading - Electronic Service <i>Notice of Hearing Date - EDWARD B. LATTNER -Envelope # 9460990</i> Sent to:: Attorney Lattner, Edward B. |
| 04/20/2022 |  Writ /Summons/Pleading - Electronic Service <i>Notice of Hearing Date - PATRICIA L. KANE -Envelope # 9460990</i> Sent to:: Attorney KANE, PATRICIA L |
| 04/20/2022 |  Writ /Summons/Pleading - Electronic Service |

CIRCUIT COURT FOR MONTGOMERY COUNTY, MD
CASE SUMMARY

CASE No. 485899V


Notice of Hearing Date - SEAN CHARLES O'HARA -Envelope # 9460990
Sent to:: Attorney O'HARA, SEAN CHARLES

04/28/2022

 Joint Request / Motion

to extend time (to one hour) for argument on parties' cross-motions for summary judgment.
Filed by:: Plaintiff MARYLAND SHALL ISSUE INC; Plaintiff ENGAGE ARMAMENT LLC; Plaintiff RAYMOND, ANDREW; Plaintiff RABANALES, CARLOS; Plaintiff FERRELL, BRANDON; Plaintiff WEAVER, DERYCK; Plaintiff EDGAR, JOSHUA; Plaintiff ICE FIREARMS & DEFENSIVE TRAINING LLC; Plaintiff DAVID, RONALD; Plaintiff DAVID, NANCY; Defendant MONTGOMERY COUNTY MARYLAND

05/12/2022

 Response/Reply

to Plaintiffs' Supplemental Memorandum regarding enactment of Senate Bill 387 and House Bill 425 into law
Filed By: Defendant MONTGOMERY COUNTY MARYLAND

05/12/2022

 Supporting Exhibit
Ex. H

05/12/2022

 Supporting Exhibit
Ex. I


05/12/2022

 Supporting Exhibit
Ex. L

05/12/2022

 Supporting Exhibit
Ex. M

05/12/2022

 Supporting Exhibit
Ex. N

05/12/2022

 Supporting Exhibit
Ex. O

05/12/2022

 Supporting Exhibit
Ex. P


05/12/2022

 Supporting Exhibit
Ex. Q

05/12/2022

 Supporting Exhibit
Ex. J

05/12/2022

 Supporting Exhibit
Ex. K

05/16/2022











 Motion/Request

TO EXCEED PAGE LIMITATION ON MEMORANDUM IN RESPONSE TO DEFENDANT'S SUBMISSION CONCERNING HB 425 AND SB 387











Filed by: Plaintiff MARYLAND SHALL ISSUE INC; Plaintiff ENGAGE ARMAMENT LLC; Plaintiff RAYMOND, ANDREW; Plaintiff RABANALES, CARLOS; Plaintiff FERRELL, BRANDON; Plaintiff WEAVER, DERYCK; Plaintiff EDGAR, JOSHUA; Plaintiff ICE FIREARMS & DEFENSIVE TRAINING LLC; Plaintiff DAVID, RONALD; Plaintiff DAVID, NANCY

CASE SUMMARY

CASE NO. 485899V








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| 05/16/2022 |  Memorandum <i>IN RESPONSE TO DEFENDANT'S SUBMISSION</i> |
| 05/16/2022 |  Supporting Exhibit <i>A In Support of MEMORANDUM IN RESPONSE TO DEFENDANT'S SUBMISSION CONCERNING HB 425 AND SB 387</i> |
| 05/18/2022 |  Order - Mot/Pet/Req - Partial Granted and/or Partial Denied (Judicial Officer: Ryon, Joan E.) Notices To: Attorney O'HARA, SEAN CHARLES; Attorney KANE, PATRICIA L; Attorney Lattner, Edward B.; Attorney Pennak, Mark William |
| 05/18/2022 |  Writ /Summons/Pleading - Electronic Service <i>ORDER - ENVELOPE #9665853</i> Sent to:: Attorney O'HARA, SEAN CHARLES; Attorney KANE, PATRICIA L; Attorney Lattner, Edward B.; Attorney Pennak, Mark William |
| 05/18/2022 |  Motion/Request <i>for clarification</i> Filed by: Plaintiff MARYLAND SHALL ISSUE INC; Plaintiff ENGAGE ARMAMENT LLC; Plaintiff RAYMOND, ANDREW; Plaintiff RABANALES, CARLOS; Plaintiff FERRELL, BRANDON; Plaintiff WEAVER, DERYCK; Plaintiff EDGAR, JOSHUA; Plaintiff ICE FIREARMS & DEFENSIVE TRAINING LLC; Plaintiff DAVID, RONALD; Plaintiff DAVID, NANCY |
| 05/20/2022 |  Motion - Postponement/Continuance <i>Consent</i> Filed by: Plaintiff MARYLAND SHALL ISSUE INC; Plaintiff ENGAGE ARMAMENT LLC; Plaintiff RAYMOND, ANDREW; Plaintiff RABANALES, CARLOS; Plaintiff FERRELL, BRANDON; Plaintiff WEAVER, DERYCK; Plaintiff EDGAR, JOSHUA; Plaintiff ICE FIREARMS & DEFENSIVE TRAINING LLC; Plaintiff DAVID, RONALD; Plaintiff DAVID, NANCY |
| 05/20/2022 |  Motion for Summary Judgment <i>Renewed Motion for Summary Judgment</i> Filed by: Plaintiff MARYLAND SHALL ISSUE INC; Plaintiff ENGAGE ARMAMENT LLC; Plaintiff RAYMOND, ANDREW; Plaintiff RABANALES, CARLOS; Plaintiff FERRELL, BRANDON; Plaintiff WEAVER, DERYCK; Plaintiff EDGAR, JOSHUA; Plaintiff ICE FIREARMS & DEFENSIVE TRAINING LLC; Plaintiff DAVID, RONALD; Plaintiff DAVID, NANCY |
| 05/23/2022 |  Hearing - Motion to Dismiss (10:00 AM) (Judicial Officer: Ryon, Joan E. ;Location: Courtroom 5F - South Tower) <i>(2-22-22) DEFENDANT'S MOTION TO DISMISS OR, ALTERNATIVELY, FOR SUMMARY JUDGMENT ** (3-7-2022) PLAINTIFFS' OPPOSITION TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT AND MOTION TO DISMISS ** JOINT MOTION TO EXTEND TIME (TO ONE HOUR) FOR ARGUMENT ON PARTIES' CROSS-MOTION FOR SUMMARY JUDGMENT. (4-28-2022)</i> Events: 02/22/2022 Motion / Request - To Dismiss 03/07/2022 Opposition 04/28/2022 Joint Request / Motion <i>Postponed</i> |
| 05/23/2022 |  Hearing Sheet (Judicial Officer: Ryon, Joan E.) |
| 06/02/2022 |  Order/Ruling for Postponement/Continuance Granted (Judicial Officer: Ryon, Joan E.) |

CIRCUIT COURT FOR MONTGOMERY COUNTY, MD
CASE SUMMARY
CASE No. 485899V

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| 06/03/2022 |  Writ /Summons/Pleading - Electronic Service <i>ORDER - ENVELOPE #9778222</i> Sent to:: Attorney O'HARA, SEAN CHARLES; Attorney KANE, PATRICIA L; Attorney Lattner, Edward B.; Attorney Pennak, Mark William |
| 07/07/2022 |  Motion - Postponement/Continuance Filed by: Plaintiff MARYLAND SHALL ISSUE INC; Plaintiff ENGAGE ARMAMENT LLC; Plaintiff RAYMOND, ANDREW; Plaintiff RABANALES, CARLOS; Plaintiff FERRELL, BRANDON; Plaintiff WEAVER, DERYCK; Plaintiff EDGAR, JOSHUA; Plaintiff ICE FIREARMS & DEFENSIVE TRAINING LLC; Plaintiff DAVID, RONALD; Plaintiff DAVID, NANCY; Defendant MONTGOMERY COUNTY MARYLAND |
| 07/08/2022 | Converted Event Type |
| 07/08/2022 | Converted Event Type |
| 07/10/2022 |  Line <i>SUBMISSION OF SUPPLEMENTAL AUTHORITIES</i> Filed by: Plaintiff MARYLAND SHALL ISSUE INC; Plaintiff ENGAGE ARMAMENT LLC; Plaintiff RAYMOND, ANDREW; Plaintiff RABANALES, CARLOS; Plaintiff FERRELL, BRANDON; Plaintiff WEAVER, DERYCK; Plaintiff EDGAR, JOSHUA; Plaintiff ICE FIREARMS & DEFENSIVE TRAINING LLC; Plaintiff DAVID, RONALD; Plaintiff DAVID, NANCY |
| 07/10/2022 |  Supporting Exhibit <i>Exhibit A NYSRPA v. Bruen</i> |
| 07/10/2022 |  Supporting Exhibit <i>Exhibit B, Fooks v. State</i> |
| 07/10/2022 |  Supporting Exhibit <i>Exhibit C, AG letter to Maryland State Police</i> |
| 07/15/2022 |  Order/Ruling for Postponement/Continuance Granted (Judicial Officer: Bonifant, James A) |
| 07/15/2022 |  Writ /Summons/Pleading - Electronic Service <i>ORDER OF COURT/ ENVELOPE #10081269</i> Sent to:: Attorney Pennak, Mark William |
| 07/19/2022 |  Hearing - Motion to Dismiss (10:00 AM) (Judicial Officer: Cummins, Jill ;Location: Courtroom 7A - North Tower) <i>(2-22-2022) DEFENDANT'S MOTION TO DISMISS OR, ALTERNATIVELY FOR SUMMARY JUDGMENT ** (3-7-2022) PLAINTIFFS' OPPOSITION TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT AND MOTION TO DISMISS ** JOINT MOTION TO EXTEND TIME (TO ONE HOUR) FOR ARGUMENT ON PARTIES CROSS-MOTION FOR SUMMARY JUDGMENT (4-28-2022) ** PER JUDGE RYON'S COURTROOM ON 5-23-2022, PLAINTIFFS' RENEWED MOTION FOR SUMMARY JUDGMENT (5-20-2022) SHALL BE HEARD AT THE SAME TIME AS DEFENDANT'S PENDING MOTION TO DISMISS AND ALTERNATIVE MOTION FOR SUMMARY JUDGMENT.(2-22-2022)</i> Events: 02/22/2022 Motion / Request - To Dismiss 05/20/2022 Motion for Summary Judgment <i>Concluded / Held</i> |
| 07/19/2022 |  Hearing Sheet (Judicial Officer: Cummins, Jill) |

CASE SUMMARY

CASE No. 485899V

| | |
|------------|---|
| 07/19/2022 | Court Takes Under Advisement (Judicial Officer: Cummins, Jill) |
| 07/22/2022 |  Complaint - Amended <i>FIRST</i> Filed by: Plaintiff MARYLAND SHALL ISSUE INC; Plaintiff ENGAGE ARMAMENT LLC; Plaintiff RAYMOND, ANDREW; Plaintiff RABANALES, CARLOS; Plaintiff FERRELL, BRANDON; Plaintiff WEAVER, DERYCK; Plaintiff EDGAR, JOSHUA; Plaintiff ICE FIREARMS & DEFENSIVE TRAINING LLC; Plaintiff DAVID, RONALD; Plaintiff DAVID, NANCY |
| 07/22/2022 |  Supporting Exhibit <i>"Compare Document" under Rule 2-341(e)</i> |
| 07/22/2022 |  Certificate of Service <i>of Amended Complaint</i> |
| 07/27/2022 |  Order - Motion/Request Moot (Judicial Officer: Cummins, Jill) Notices To:: Attorney O'HARA, SEAN CHARLES; Attorney KANE, PATRICIA L; Attorney Lattner, Edward B.; Attorney Pennak, Mark William |
| 07/27/2022 |  Order - Motion/Request Moot (Judicial Officer: Cummins, Jill) Notices To:: Attorney O'HARA, SEAN CHARLES; Attorney KANE, PATRICIA L; Attorney Lattner, Edward B.; Attorney Pennak, Mark William |
| 07/27/2022 |  Writ /Summons/Pleading - Electronic Service <i>Order Dismiss and Summary Judgment</i> Envelope #: 10164149 Sent to:: Attorney O'HARA, SEAN CHARLES; Attorney KANE, PATRICIA L; Attorney Lattner, Edward B.; Attorney Pennak, Mark William |
| 10/27/2022 |  Hearing - Pretrial/Status (10:30 AM) (Judicial Officer: Bonifant, James A ;Location: Courtroom 3E - North Tower) 07/28/2022 <i>Continued to 10/27/2022 - Joint - MARYLAND SHALL ISSUE INC; ENGAGE ARMAMENT LLC; RAYMOND, ANDREW; RABANALES, CARLOS; FERRELL, BRANDON; WEAVER, DERYCK; ICE FIREARMS & DEFENSIVE TRAINING LLC; DAVID, RONALD; DAVID, NANCY; MONTGOMERY COUNTY MARYLAND</i> |

TARGET DATE

TIME STANDARDS

| Time to Disposition Deadlines | | |
|-------------------------------|--|------------------------------|
| 04/28/2024 | Case Age | 02/18/2022 ***Active*** |
| 06/21/2022 ***Overdue*** | Montgomery - Filing Motion Deadline for Alt. Service | |
| 07/11/2022 ***Overdue*** | Montgomery - Discovery Completion | |
| 07/25/2022 ***Overdue*** | Montgomery - Motions Filing Cutoff | |
| 07/25/2022 ***Overdue*** | Montgomery - ADR Deadline | |
| 09/27/2021 ***Overdue*** | Montgomery - Filing Motion Deadline for Alt. Service | 07/13/2021 ***Complete*** |
| 10/16/2022 | Montgomery - Pretrial Statement | |
| 10/18/2021 | | 07/13/2021 |

CASE SUMMARY

CASE No. 485899V

Overdue

10/27/2021

Overdue

11/12/2021

Overdue

Montgomery - Discovery Completion

Montgomery - Pretrial Statement

Montgomery - Motions Filing Cutoff

Complete

07/13/2021

Complete

07/13/2021

Complete

IN THE CIRCUIT COURT FOR MONTGOMERY COUNTY, MARYLAND

**MARYLAND SHALL
ISSUE, INC., *et al.***

Plaintiffs,

v.

**MONTGOMERY COUNTY,
MARYLAND,**

Defendant.

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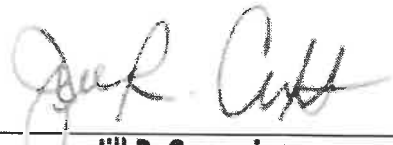
Case No. 485899V

ORDER

This matter came before the Court on the 19th day of July 2022 on Defendant's Motion to Dismiss, or Alternatively, for Summary Judgment, filed February 22, 2022, and Plaintiffs' Renewed Motion for Summary Judgment, filed May 20, 2022. It having come to the attention of the Court that following the hearing Plaintiffs' filed a First Amended Verified Complaint for Declaratory and Equitable Relief and for Compensatory Damages, Nominal Damages, and Attorney's Fees and Costs on July 22, 2022, it is this **26th day of July 2022**, by the Circuit Court for Montgomery County, Maryland,

ORDERED, that Defendant's Motion to Dismiss, or Alternatively, for Summary Judgment, filed February 22, 2022, is hereby **MOOT**; and it is further,

ORDERED, that Plaintiffs' Renewed Motion for Summary Judgment, filed May 20, 2022, is hereby **MOOT**.



Jill R. Cummins
JUDGE for the Circuit Court for
Montgomery County, Maryland

7/26/2022 4:19:42 PM

Entered: Clerk, Circuit Court for
Montgomery County, MD
July 27, 2022

IN THE CIRCUIT COURT FOR MONTGOMERY COUNTY, MARYLAND

**MARYLAND SHALL ISSUE, INC.
9613 Harford Rd., Ste C #1015
Baltimore, Maryland 21234-2150**

**ENGAGE ARMAMENT LLC
701 E. Gude Dr., Ste 101,
Rockville, Maryland 20850**

**ANDREW RAYMOND
14819 Poplar Hill Rd
Darnestown MD 20874**

Case No.: 485899V

**CARLOS RABANALES
7727 Green Valley Rd,
Frederick, Maryland 21701**

JURY DEMANDED

**BRANDON FERRELL
40 Mountain Laurel Court
Gaithersburg, Maryland 20879**

**DERYCK WEAVER
8712 Lowell Street
Bethesda, Maryland 20817**

**JOSHUA EDGAR
8416 Flower Hill Terr.
Gaithersburg Maryland 20879**

**I.C.E. FIREARMS & DEFENSIVE
TRAINING, LLC,
24129 Pecan Grove Lane
Gaithersburg, Maryland 20882**

**RONALD DAVID
24129 Pecan Grove Lane
Gaithersburg, Maryland 20882**

**NANCY DAVID
24129 Pecan Grove Lane
Gaithersburg, Maryland 20882**

Plaintiffs,

1 v.

2 MONTGOMERY COUNTY,
3 MARYLAND
4 101 Monroe Street
Rockville, Maryland 20850

5 *Defendant.*
6
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8

9
10 **FIRST AMENDED**
11 **VERIFIED COMPLAINT FOR DECLARATORY AND EQUITABLE RELIEF**
12 **AND FOR COMPENSATORY DAMAGES, NOMINAL DAMAGES AND**
ATTORNEY'S FEES AND COSTS

13 COME NOW, the Plaintiffs, through counsel, and sue the Defendant, and for cause state as
14 follows:
15

16 **INTRODUCTION**

17 1. On April 16, 2021, the Defendant, Montgomery County, Maryland ("the County")
18 signed into law Bill 4-21, a copy of which is attached to this complaint as Exhibit A. Bill 4-21 becomes
19 effective on July 16, 2021. Through the enactment of County ordinance 4-21, the County has
20 unlawfully exceeded its powers and jurisdiction to criminally regulate the possession and transfer of
21 lawfully owned firearms in a way that is in direct conflict with Article XI-A, § 3 and Article XI-A,
22 § 6 of the Maryland Constitution and in a manner that is inconsistent with multiple existing Maryland
23 statutes. The restrictions enacted by Bill 4-21 violate the Maryland Takings Clause, Article III § 40
24 and the Due Process Clause of Article 24 of the Maryland Declaration of Rights by depriving plaintiffs
25 of their vested property rights in the personal property regulated by Bill 4-21. The hopelessly vague
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provisions violate the Due Process Clause of the Fourteenth Amendment and the Due Process Clause of Article 24 of the Maryland Declaration of Rights. Maryland County Code § 57-11, as amended by Bill 4-21 violates the Second Amendment to the Constitution in so far as it purports to regulate or ban the sale, transfer, possession or transport of any firearm or any ammunition within 100 yards of a place of public assembly as that term is defined by Bill 4-21. To the extent that Maryland Code, Criminal Law § 4-209(b) purports to authorize the regulations imposed by Bill 4-21, it is likewise unconstitutional under the Second Amendment. Pursuant to 42 U.S.C. § 1983, Plaintiffs seek declaratory and injunctive relief and compensatory damages, including nominal damages, for the violations of their Federal constitutional rights vague language adopted by Bill 4-21, as alleged below. Plaintiffs further seek an award of attorneys' fees under 42 U.S.C. § 1988, in an amount to be determined, for the violations of their Federal constitutional rights, as alleged below. Plaintiffs seek declaratory and injunctive relief on their State Constitutional and statutory law claims.

JURISDICTION AND VENUE

2. This Court has jurisdiction over this matter pursuant to MD Code, Courts and Judicial Proceedings, § 1-501, and MD Code, Courts and Judicial Proceedings, § 3-403, as this complaint seeks prospective declaratory and injunctive relief damages, attorneys' fees pursuant to 42 U.S.C. § 1988, and other relief afforded by 42 U.S.C. § 1983. This complaint raises both state law claims as well as claims arising under the United States Constitution. This declaratory judgment action is brought pursuant to MD Code, Courts and Judicial Proceedings § 3-406, and MD Code, Courts and Judicial Proceedings, § 3-409, for the purpose of determining questions of actual controversy between the parties and terminating uncertainty and controversy giving rise to this proceeding. Plaintiffs request a speedy hearing of this action in accordance with MD Code, Courts and Judicial Proceedings, § 3-409(e).

3. Venue is properly in this Court in this matter pursuant to MD Code, Courts and Judicial Proceedings, § 6-201, as the defendant resides, carries on a regular business and maintains its principal offices in Montgomery County, Maryland. Montgomery County is named as a defendant and is a necessary party to this action under MD Code, Courts and Judicial Proceedings, § 3-405(b).

MONTGOMERY COUNTY BILL 4-21

4. In relevant part, Bill 4-21 amends several sections of Chapter 57 of the Montgomery County Code (“County Code”). Specifically, Bill 4-21 amends Section 57-1, to broaden the definition of a “gun or firearm” to include **“a ghost gun”** and, in addition, to provide the following new definitions (additions enacted by Bill 4-21 are **bolded**, portions of existing law that are deleted by Bill 4-21 are in *brackets and italics*):

a. A **“3D printing process”** is defined as **“a process of making a three-dimensional, solid object using a computer code or program, including any process in which material is joined or solidified under computer control to create a three-dimensional object;”**

b. A **“ghost gun”** is defined as **“a firearm, including an unfinished frame or receiver, that lacks a unique serial number engraved or cased in metal alloy on the frame or receiver by a licensed manufacturer, maker or importer under federal law or markings in accordance with 27 C.F.R. § 479.102. It does not include a firearm that has been rendered permanently inoperable, or a firearm that is not required to have a serial number in accordance with the Federal Gun Control Act of 1968;”**

c. The term **“Undetectable gun”** is defined as:
(A) a firearm that, after the removal of all its parts other than a major component, is not detectable by walk-through metal detectors commonly used at airports or other public buildings;

1 (B) a major component that, if subjected to inspection by the types of detection devices
2 commonly used at airports or other public buildings for security screening, would not generate
3 an image that accurately depicts the shape of the component; or
4

5 C) a firearm manufactured wholly of plastic, fiberglass, or through a 3D printing process.

6 d. A “Major component” is defined as “with respect to a firearm: (1) the slide or cylinder
7 or the frame or receiver; and (2) in the case of a rifle or shotgun, the barrel;”

8 e. A “Place of public assembly” is defined as a place where the public may assemble,
9 whether the place is publicly or privately owned, including a *[government owned] park [identified*
10 *by the Maryland-National Capital Park and Planning Commission]*; place of worship; [elementary
11 or secondary] school; *[public] library; [government-owned or -operated]* recreational facility;
12 hospital; community health center; long-term facility; or multipurpose exhibition facility, such as
13 a fairgrounds or conference center. A place of public assembly includes all property associated with
14 the place, such as a parking lot or grounds of a building.
15

16 5. Bill 4-21 amends Section 57-7 of the County Code to provide (new additions in bold):
17

18 (c) A person must not give, sell, rent, lend, or otherwise transfer to a minor:

19 (1) a ghost gun or major component of a ghost gun;

20 (2) an undetectable gun or major component of an undetectable gun;

21 or
22

23 (3) a computer code or program to make a gun through a 3D printing
24 process.

25 (d) A person must not purchase, sell, transfer, possess, or transfer a ghost gun, including
26 a gun through a 3D printing process, in the presence of a minor.

27 (e) A person must not store or leave a ghost gun, an undetectable gun, or a
28

1 **major component of a ghost gun or an undetectable gun, in a location**
2 **that the person knows or should know is accessible to a minor.**

3 6. Bill 4-21 also amends 57-11 of the County Code to provide (new provisions added by
4 Bill 4-21 are in **bold**, portions deleted by Bill 4-21 are in *brackets* and *italics*):

5 (a) [A] **In or within 100 yards of a place of public assembly, a person must not:**

6 (1) sell, transfer, possess, or transport **a ghost gun, undetectable gun**, handgun, rifle,
7 or shotgun, or ammunition **or major component** for these firearms[, *in or within 100*
8 *yards of a place of public assembly*]; **or**

9 (2) **sell, transfer, possess, transport a firearm created through a 3D printing**
10 **process.**

11 (b) This section does not:

12 * * * * ,

13 (3) apply to the possession of a firearm or ammunition, **other than a**
14 **ghost gun or an undetectable gun**, in the person's own home;

15 (4) apply to the possession of one firearm, and ammunition for the
16 firearm, at a business by either the owner **who has a permit to**
17 **carry the firearm**, or one authorized employee of the business
18 **who has a permit to carry the firearm;**

19 (5) apply to the possession of a handgun by a person who has
20 received a permit to carry the handgun under State law; or

21 (A) transported in an enclosed case or in a locked firearms rack
22 on a motor vehicle, **unless the firearm is a ghost gun or an**
23 **undetectable gun; or**

* * * *

7. Bill 4-21 leaves unaltered the penalties for a violation of Chapter 57 of the County Code. Under Section 57-15 of the County Code, with an exception for violations of Section 5-8 not applicable here: “Any violation of this Chapter or a condition of an approval certificate issued under this Chapter is a Class A violation to which the maximum penalties for a Class A violation apply.” Under Section 1-19 of the County Code, the maximum penalties applicable for a violation of the offenses created by Bill 4-21 are criminal penalties of a \$1,000 fine and 6 months in jail. Under Section 1-20(c) of the County Code, “[e]ach day any violation of County law continues is a separate offense.”

STATE AND FEDERAL FIREARMS LAW

8. Under Federal law, a person may legally manufacture a firearm for his own personal use. See 18 U.S.C. § 922(a). See *Defense Distributed v. Department of State*, 838 F.3d 451 (5th Cir. 2016). Under Maryland law, a person is likewise permitted to manufacture a firearm for her own personal use. Firearms manufactured for personal use are not required to be serialized or engraved with a serial number under Federal law or Maryland law.

9. Under Federal law, 18 U.S.C. § 921(a)(3), “[t]he term “firearm” means (A) any weapon (including a starter gun) which will or is designed to or may readily be converted to expel a projectile by the action of an explosive; (B) the frame or receiver of any such weapon; (C) any firearm muffler or firearm silencer; or (D) any destructive device. Such term does not include an antique firearm.”

10. Similarly, under Maryland law, MD Code, Public Safety, § 5-101(h)(1), a “firearm” is defined as “(i) a weapon that expels, is designed to expel, or may readily be converted to expel a projectile by the action of an explosive; or (ii) the frame or receiver of such a weapon.” Maryland law

1 does not define “frame or receiver.” Maryland law does not define or regulate the possession, sale or
2 transfer of “major components” for firearms. Fully finished receivers are commonly sold with serial
3 numbers already engraved in compliance with Federal law and such fully finished receivers may be
4 lawfully assembled by law-abiding persons for personal use by obtaining other components that
5 lawfully available and sold throughout the United States.
6

7 11. Since 1968, the Federal Bureau of Alcohol, Tobacco and Firearms (“ATF”) has
8 defined a “receiver” as “[t]hat part of a firearm which provides housing for the hammer, bolt or
9 breechblock, and firing mechanism, and which is usually threaded at its forward portion to receive
10 the barrel.” See 27 C.F.R. § 478.11; 33 Fed. Reg. 18558 (1968). Under ATF Guidance, an unfinished
11 receiver that has not yet had “machining of any kind performed in the area of the trigger/hammer
12 (fire-control) recess (or cavity),” is not considered to be a receiver and is thus not considered to be a
13 firearm. ATF Firearms Technology Branch Technical Bulletin 14-01. Such firearms are sometimes
14 informally called “80% receivers,” depending on the extent to which milling has already occurred.
15 While Bill 4-21 purports to regulate “major components” of firearms and defines major components
16 to mean “(1) the slide or cylinder or the frame or receiver; and (2) in the case of a rifle or shotgun, the
17 barrel,” Bill 4-21 does not attempt to define “frame or receiver.” Federal law does not require the
18 manufacturer place any serial number on the slide or cylinder, or barrel, but rather requires that “an
19 individual serial number” be placed on the “frame or receiver.” 27 C.F.R. § 478.92(a)(1)(i). See also
20 27 C.F.R. § 479.102. Maryland law does not regulate the placement of serial numbers. A receiver that
21 has been serialized by a federally regulated firearms manufacturer is treated as a “firearm” under
22 Federal law and is thus subject to the full panoply of Federal regulation, including the performance
23 of a background check otherwise required by Federal law. These definitions were modified and
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1 updated by ATF regulations published on April 26, 2022. See *Definition of “Frame or Receiver”*
2 *and Identification of Firearms*, 87 Fed. Reg. 24651 (April 26, 2022).

3 12. Persons otherwise prohibited from owning firearms are still legally barred from the
4 manufacture, transfer, or possession of modern firearms or modern ammunition, regardless of the
5 method of manufacture. Such possession, actual or constructive, is a violation of 18 U.S.C. § 922(g),
6 which is punishable by up to 10 years imprisonment under Federal law. See 18 U.S.C. § 924(a)(2).
7 Possession of a firearm by a prohibited person is likewise a serious crime under Maryland law. See
8 MD Code, Public Safety, § 5-101(g)(3), § 5-133(b)(1), § 5-205(b)(1).
9

10 13. Under current Federal law, it is unlawful to “manufacture, import, sell, ship, deliver,
11 possess, transfer, or receive” any firearm that is not “detectable” by a “Security Exemplar” or any
12 “major component” of which does not show up accurately on airport x-ray machines. 18 U.S.C. §
13 922(p). A knowing violation of that prohibition is a Federal felony, punishable by five years of
14 imprisonment and a fine. See 18 U.S.C. § 924(f). For these purposes, Federal law provides that “the
15 term “Security Exemplar” means an object, to be fabricated at the direction of the Attorney General,
16 that is-- (i) constructed of, during the 12-month period beginning on the date of the enactment of this
17 subsection, 3.7 ounces of material type 17-4 PH stainless steel in a shape resembling a handgun; and
18 (ii) suitable for testing and calibrating metal detectors.” 18 U.S.C. § 922(p)(2)(C).
19

20 14. Law-abiding Americans, including hobbyists, have lawfully manufactured firearms
21 for personal use since before the Revolutionary War and that practice continues up to the present day.
22 While there is no definitive count of such personal-use firearms, the total number of such firearms
23 manufactured for personal use is undoubtedly in the hundreds of thousands and are in common use
24 within the United States and Maryland. Such firearms manufactured for personal use include rifles
25 and pistols and all such firearms successfully manufactured for personal use may be used for
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1 legitimate lawful purposes, including self-defense in the home. The Second Amendment to the United
2 States Constitution guarantees a right to use firearms “for the core lawful purpose of self-defense.”
3 *District of Columbia v. Heller*, 554 U.S. 570, 630 (2008). The Second Amendment protects arms that
4 are “typically possessed by law-abiding citizens for lawful purposes.” (Id. at 625).

5
6 15. Under MD Code, Criminal Law, § 4-203(b)(3), Maryland law expressly permits a
7 person to transport a handgun “on the person or in a vehicle while the person is transporting the
8 handgun to or from the place of legal purchase or sale, or to or from a bona fide repair shop, or
9 between bona fide residences of the person, or between the bona fide residence and place of business
10 of the person, if the business is operated and owned substantially by the person if each handgun is
11 unloaded and carried in an enclosed case or an enclosed holster.” Such transport and carriage of long
12 guns, such as rifles and shotguns, are permitted under Maryland law without restriction.

13
14 16. Under MD Code, Criminal Law, § 4-203(b)(5), Maryland law expressly permits “the
15 moving by a bona fide gun collector of part or all of the collector's gun collection from place to place
16 for public or private exhibition if each handgun is unloaded and carried in an enclosed case or an
17 enclosed holster.” Such transport and carriage of long guns, such as rifles and shotguns, are permitted
18 under Maryland law without restriction.

19
20 17. Under MD Code, Criminal Law, § 4-203(b)(6), Maryland law expressly permits “the
21 wearing, carrying, or transporting of a handgun by a person on real estate that the person owns or
22 leases or where the person resides or within the confines of a business establishment that the person
23 owns or leases.” Such persons are not required to possess or obtain a Maryland carry permit under
24 MD Code, Public Safety, § 5-306. There is no limitation on the number of handguns or types of
25 ammunition that may be possessed, worn, carried or transported under this provision of Section 4-
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1 203(b)(6). Such transport, wear and carriage of rifles and shotguns in a person's residence or business
2 are permitted under Maryland law without restriction.

3 18. Under MD Code, Criminal Law, § 4-203(b)(7), Maryland law expressly permits "the
4 wearing, carrying, or transporting of a handgun by a supervisory employee: (i) in the course of
5 employment; (ii) within the confines of the business establishment in which the supervisory employee
6 is employed; and (iii) when so authorized by the owner or manager of the business establishment."
7 Such persons are not required to possess or obtain a Maryland carry permit under MD Code, Public
8 Safety, § 5-306. There is no limitation on the number of handguns or ammunition that may be
9 possessed, worn, carried or transported under this provision of Section 4-203(b)(7). There is no
10 limitation on the number of supervisory employees whom the employer may authorize to carry a
11 firearm under this section. Such transport, wear and carriage of rifles and shotguns by business
12 employees are permitted under Maryland law without restriction.

13 19. Under MD Code, Public Safety, § 5-133(d)(2)(i), a person under the age of 21 may
14 temporarily transfer and possess a regulated firearm, including a handgun, if the person is "1. under
15 the supervision of another who is at least 21 years old and who is not prohibited by State or Federal
16 law from possessing a firearm; and 2. acting with the permission of the parent or legal guardian of the
17 transferee or person in possession." Under MD Code, Public Safety, § 5-133(d)(2)(iv), a person under
18 the age of 21 may temporarily transfer or possess a regulated firearm, including a handgun, if the
19 person is "1. participating in marksmanship training of a recognized organization; and 2. under the
20 supervision of a qualified instructor."

21 20. MD Code, Criminal Law, § 4-104, expressly permits a minor child under the age of
22 16 to have access to any firearm if that access "is supervised by an individual at least 18 years old" or
23 if the minor child under the age of 16 has a certificate of firearm and hunter safety issued under § 10-

1 301.1 of the Natural Resources Article. By necessary implication, access to a firearm by a minor child
2 between the ages of 16 and 18 is permitted by Section 4-104 without restriction.

3 21. The regulation of unserialized firearms is a matter of significant state-wide and
4 national interest. In the 2021 General Assembly, ghost guns were addressed in three bills. Two bills,
5 House Bill 638 and Senate Bill 624, would have imposed extensive regulation on the possession and
6 transfer of ghost guns, but would have also afforded a path for existing owners to retain possession
7 of their existing, unserialized firearms that they had lawfully manufactured for personal use. One bill,
8 House Bill 1291, would have banned unserialized firearms manufactured for personal use completely.
9 Similar legislation was proposed in the 2020 General Assembly session, with House Bill 910 and
10 Senate Bill 958, and in the 2019 General Assembly session, with House Bill 740 and Senate Bill 882.
11 House Bill 740 passed the House of Delegates in 2019, and it instructed the Maryland State Police to
12 “develop a plan for a system in the State for the registration of firearms not imprinted with a serial
13 number issued by a federally licensed firearms manufacturer or importer and submit a report
14 describing the system” In the 2021 Session, provisions of House Bill 638 were incorporated into
15 other legislation that had passed the Senate (Senate Bill 190), and that bill, as amended, passed the
16 House Judiciary Committee and was reported to the floor of the House of Delegates, where it was
17 further amended. That bill ultimately did not pass the House.

18 22. On May 7, 2021, the Attorney General announced that the Department of Justice, the
19 Bureau of Alcohol, Tobacco and Firearms, would engage in new rule-making proceedings for the
20 purpose of regulating the manufacture and transfer of “ghost guns.” See Press Release, Justice
21 Department Proposes New Regulation to Update Firearm Definitions Proposed Rule Seeks to Close
22 “Ghost Gun” Loophole (available at <https://bit.ly/3wceMr3>). These proposed regulations have been
23 published in the Federal Register. 86 Fed. Reg. 27720-01, 2021 WL 2012830 (May 21, 2021). The
24

1 proposed regulations would regulate manufacturers and dealers but would not limit or regulate the
2 possession of unserialized firearms lawfully built by individuals for their own personal use. These
3 proposed regulations do not limit or regulate the sale or possession of receivers that are otherwise
4 serialized in accordance with existing Federal law.
5

6 **MARYLAND CONSTITUTIONAL AND STATUTORY PREEMPTION PROVISIONS**

7 23. Maryland law contains several preemption statutes that broadly preempt local
8 jurisdictions from regulating firearms:

9 a. MD Code, Public Safety, § 5-104, provides that “[t]his subtitle supersedes any
10 restriction that a local jurisdiction in the State imposes on a sale of a regulated firearm, and the State
11 preempts the right of any local jurisdiction to regulate the sale of a regulated firearm.”
12

13 b. MD Code, Public Safety, § 5-133(a), provides that “[t]his section supersedes any
14 restriction that a local jurisdiction in the State imposes on the possession by a private party of a
15 regulated firearm, and the State preempts the right of any local jurisdiction to regulate the possession
16 of a regulated firearm.”
17

18 c. MD Code, Public Safety, § 5-134(a), provides that “[t]his section supersedes any
19 restriction that a local jurisdiction in the State imposes on the transfer by a private party of a regulated
20 firearm, and the State preempts the right of any local jurisdiction to regulate the transfer of a regulated
21 firearm.”
22

23 d. MD Code, Public Safety, § 5-207(a), enacted into law in 2021 as part of House Bill
24 4, provides that “[t]his section supersedes any restriction that a local jurisdiction in the State imposes
25 on the transfer by a private party of a rifle or shotgun, and the State preempts the right of any local
26 jurisdiction to regulate the transfer of a rifle or shotgun.”
27

28 e. MD Code, Criminal Law, § 4-209, provides:

(a) Except as otherwise provided in this section, the State preempts the right of a county, municipal corporation, or special taxing district to regulate the purchase, sale, taxation, transfer, manufacture, repair, ownership, possession, and transportation of:

- (1) a handgun, rifle, or shotgun; and
- (2) ammunition for and components of a handgun, rifle, or shotgun.

Exceptions

(b)(1) A county, municipal corporation, or special taxing district may regulate the purchase, sale, transfer, ownership, possession, and transportation of the items listed in subsection (a) of this section:

- (i) with respect to minors;
- (ii) with respect to law enforcement officials of the subdivision; and
- (iii) except as provided in paragraph (2) of this subsection, within 100 yards of or in a park, church, school, public building, and other place of public assembly.

(2) A county, municipal corporation, or special taxing district may not prohibit the teaching of or training in firearms safety, or other educational or sporting use of the items listed in subsection (a) of this section.

For purposes of these preemption provisions, a “regulated firearm” includes any handgun. MD Code, Public Safety, § 5-101(r)(1). For purposes of these preemption provisions, the terms “handgun,” “rifle,” and “shotgun” are defined in MD Code, Criminal Law, § 4-201.

24. Section 6 of Chapter 13, of the 1972 Sessions Laws of Maryland provides: “That all restrictions imposed by the law, ordinances, or regulations of the political subdivisions on the wearing, carrying, or transporting of handguns are superseded by this Act, and the State of Maryland hereby preempts the right of the political subdivisions to regulate said matters.” <https://bit.ly/2SvsRkJ>. This provision has been held to preclude the County from regulating the sale of ammunition in the County. See *Montgomery County v. Atlantic Guns, Inc.*, 302 Md. 540, 489 A.2d 1114 (1985).

25. Montgomery County has chartered home rule under Section 3 of Article XI-A of the Maryland Constitution and, under that provision, the County is empowered to enact “local laws.” Such local laws are “subject to the Constitution and Public General Laws of this State.” (Id.). Article

1 XI-A, § 6, of the Maryland Constitution provides further that “this Article shall not be construed to
2 authorize the exercise of any powers in excess of those conferred by the Legislature upon said
3 Counties or City as this Article sets forth.” Under these provisions, Montgomery County is not
4 empowered to enact “general laws.” Under Maryland law, a general law “deals with the general public
5 welfare, a subject which is of significant interest not just to any one county, but rather to more than
6 one geographical subdivision, or even to the entire state.” *Steimel v. Board*, 278 Md. 1, 5, 357 A.2d
7 386, 388 (1976). Thus, “some statutes, local in form, have been held to be general laws, since they
8 affect the interest of the whole state.” *Cole v. Secretary of State*, 249 Md. 425, 434, 240 A.2d 272,
9 278 (1968). Similarly, “[a] law may be local in the sense that it operates only within a limited area,
10 but general in so far as it affects the rights of persons without the area to carry on a business or to do
11 the work incident to a trade, profession, or other calling within the area.” *Dasch v. Jackson*, 170 Md.
12 251, 261, 183 A. 534, 538 (1936).

15 26. Under the Maryland Express Powers Act, MD Code, Local Government, § 10-202(a),
16 a “[a] county may enact local laws and may repeal or amend any local law enacted by the General
17 Assembly on any matter covered by the express powers in this title.” However, MD Code, Local
18 Government, §10-206(a), provides that a county may pass an ordinance, resolution, or bylaw only if
19 such laws are “not inconsistent with State law.” Similarly, MD Code, Local Government, §10-206(b),
20 provides that “[a] county may exercise the powers provided under this title only to the extent that the
21 powers are not preempted by or in conflict with public general law.” Under binding precedent, a local
22 law is inconsistent with State law when the local law prohibits an activity which is permitted by State
23 law, or permits an activity prohibited by state law. See *City of Baltimore v. Sitnick*, 254 Md. 303, 317,
24 255 A.2d 376, 382 (1969) (“a political subdivision may not prohibit what the State by general public
25 law has permitted”).
26
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PARTIES**Plaintiffs:**

27. Plaintiff Maryland Shall Issue, Inc. (“MSI”) is a Maryland corporation, located at 9613 Harford Rd., Ste C #1015, Baltimore, MD 21234-2150. MSI is an Internal Revenue Service certified Section 501(c)(4), non-profit membership organization with approximately 2000 members statewide. MSI is an all-volunteer, non-partisan organization dedicated to the preservation and advancement of gun owners’ rights in Maryland. It seeks to educate the community about the right of self-protection, the safe handling of firearms, and the responsibility that goes with carrying a firearm in public. The purposes of MSI include promoting the exercise of the right to keep and bear arms; and education, research, and legal action focusing on the constitutional right to privately own, possess and carry firearms. MSI has one or more members who live and/or work in Montgomery County, and who possess “ghost guns” in their homes and/or in their businesses and engage in other conduct regulated by Bill 4-21. MSI has one or more members who live outside of Montgomery County, but who travel to and/or work within Montgomery County. MSI has one or more members who lives in Montgomery County, but who do not have a Maryland carry permit. MSI has one or more members who travels in or through Montgomery County, but who do not have a Maryland carry permit. Each of the individual plaintiffs identified below are members of MSI. Among the membership of MSI are “qualified instructors” who engage in firearms training, including firearms instruction of minors.

28. MSI filed extensive comments with Montgomery County, objecting to Bill 4-21 prior to its enactment. A true and correct copy of those comments are attached to this Complaint as Exhibit B. These comments were ignored by the County in enacting Bill 4-21 and omitted as part of the legislative packet made public by the County. As a participant in this process, MSI has a specialized interest in the subject matter addressed by Bill 4-21. The Bill, as enacted, burdens the ability of MSI

1 members to keep and bear arms within Montgomery County, including firearms that are otherwise
2 lawful in Maryland, but nonetheless are banned or restricted by Bill 4-21. MSI is thus aggrieved by
3 the passage of Bill 4-21. MSI has representational standing to sue on behalf its members who live in
4 Montgomery County or who travel through Montgomery County or who otherwise are adversely
5 affected by the County's unlawful actions.
6

7 29. Plaintiff ENGAGE ARMAMENT LLC ("Engage"), is a Maryland corporation, and
8 is located at 701 E. Gude Dr., Ste 101, Rockville, MD 20850, within Montgomery County. Pursuant
9 to 18 U.S.C. § 923, Engage is a Type I and Type VII and Type X Federally licensed dealer and
10 manufacturer of firearms and explosive devices at its current location. See 27 C.F.R. § 478.41 *et seq.*
11 Pursuant to MD Code, Public Safety, § 5-106, Engage is a Maryland State licensed firearms dealer
12 and is thus authorized by State law to engage "in the business of selling, renting or transferring
13 regulated firearms." As part of its business, Engage manufactures firearm components, including
14 receivers, and then assembles such components into finished firearms which it then sells, all in full
15 compliance with Federal and State law. Engage is a dealer for machines and computer code for the
16 manufacture of firearms by individuals for personal use. It regularly demonstrates such computer code
17 to potential purchasers. From time to time, Engage stocks and sells unserialized items, which are not
18 receivers under Federal law, but which can be lawfully machined and built into firearms by the
19 purchaser for personal use. These otherwise lawful items are banned as "ghost guns" by Bill 4-21. As
20 part of its business, Engage may transfer firearms in the presence of a minor who is accompanied by
21 a parent. The business location of Engage is arguably within 100 yards of a "place of public assembly"
22 as defined by Bill 4-21.
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26 30. Plaintiff Andrew Raymond is an individual co-owner of Engage, and resides in
27 Montgomery County, Maryland. His residence in Darnestown, Maryland is within 100 yards of a
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1 public street. Plaintiff Raymond regularly conducts the business activities of Engage. He is the father
2 of two minor children who reside with him at his residence in Montgomery County. He assembles
3 firearms in the presence of his children in his residence. He possesses in his home computer code
4 which may be used to manufacture firearms within the meaning of Bill 4-21. He possesses one or
5 more ghost guns at his residence and at his place of employment at Engage. As co-owner of Engage,
6 he has authorized more than one supervisory employee at Engage to wear and carry loaded firearms
7 within the business confines of Engage for their self-protection and for the protection of the business.
8 At Engage, he possesses more than one firearm for the protection of himself and his business. He
9 possesses computer code of the type regulated by Bill 4-21
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12 31. Plaintiff Carlos Rabanales is an individual co-owner of Engage. He resides in
13 Frederick County, Maryland and regularly conducts the business activities of Engage. As co-owner
14 of Engage, he has authorized more than one supervisory employee at Engage to carry firearms within
15 the business confines of Engage for their self-protection and for the protection of the business. At
16 Engage, he possesses more than one firearm for the protection of himself and his business. He may
17 transport unserialized firearm parts and components to and from Engage as part of the business of
18 Engage.
19

20 32. Plaintiff Brandon Ferrell is an individual supervisory employee of Engage, and resides
21 in Montgomery County, Maryland. His residence in Gaithersburg is arguably within 100 yards of a
22 place of public assembly, as defined by Bill 4-21. Pursuant to MD Code, Criminal Law, 4-203(b)(7),
23 he is considered to be a supervisory employee at Engage and wears and carries a fully loaded handgun
24 in the course of his employment at Engage, "within the confines of a business establishment" as
25 "authorized" by the owners of Engage. He possesses one or more "ghost guns" at his residence and
26 at his place of employment at Engage. He possesses computer code of the type regulated by Bill 4-
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1 21. Pursuant to MD Code, Criminal Law, 4-203(b)(7), he wears and carries a fully loaded handgun
2 in the course of his employment at Engage, “within the confines of a business establishment” as
3 “authorized” by the owners of Engage. He does not possess a wear and carry permit.
4

5 33. Plaintiff Deryck Weaver is an individual supervisory employee of Engage, and resides
6 in Bethesda, Maryland. His residence is arguably within 100 yards of a “place of public assembly” as
7 that term is defined in Bill 4-21. He is the father of one minor child who lives with him at his residence.
8 He is a qualified handgun instructor within the meaning of MD Code, Public Safety, §5-101(q), as
9 well as a National Rifle Association-certified handgun instructor and National Rifle Association-
10 certified Chief Range Safety Officer. He possesses within his home one or more “ghost guns,”
11 including a rifle and a pistol “ghost gun.” From time to time, he assembles a firearm in the presence
12 of his minor child for the purposes of instruction. Pursuant to MD Code, Criminal Law, 4-203(b)(7),
13 he wears and carries a fully loaded handgun in the course of his employment at Engage, “within the
14 confines of a business establishment” as “authorized” by the owners of Engage.
15
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17 34. Plaintiff Joshua Edgar works as a contractor at Engage, and resides in Gaithersburg,
18 Maryland. His residence is arguably within 100 yards of a place of public assembly as that term is
19 defined in Bill 4-21. He possesses within his home one or more “ghost guns,” including a rifle and a
20 pistol “ghost gun.” From time to time, he assembles a firearm in the presence of a minor child for
21 purposes of instruction. He does not possess a wear and carry permit.
22

23 35. Plaintiff I.C.E. FIREARMS & DEFENSIVE TRAINING, LLC, (“ICE Firearms”) is
24 a Maryland corporation located at 24129 Pecan Grove Lane, Gaithersburg, Maryland. ICE Firearms
25 provides firearm training to individuals with handguns, rifles and shotguns. ICE Firearms possesses
26 computer code of the type regulated by Bill 4-21. ICE Firearms likewise possesses parts of firearms
27 that are banned by Bill 4-21, including “unfinished receivers” arguably banned by Bill 4-21. ICE
28

1 Firearms is arguably located within 100 yards of a “place of public assembly” as that term is defined
2 in Bill 4-21. ICE Firearms provides instruction in the safe use of firearms.

3 36. Plaintiff Ronald David is the owner and operator of ICE Firearms. He resides in
4 Gaithersburg, Maryland and his home is arguably within 100 yards of a “place of public assembly”
5 as that term is defined by Bill 4-21. He possesses computer code of the type regulated by Bill 4-21.
6 He likewise possesses one or more receivers as defined and banned by Bill 4-21 as a “ghost gun.” He
7 is a “qualified handgun instructor” within the meaning of MD Code, Public Safety, § 5-101(q), and a
8 National Rifle Association-certified Training Counselor in every shooting discipline.
9

10 37. Plaintiff Nancy David resides in Gaithersburg, Maryland and her home is arguably
11 within 100 yards of a “place of public assembly” as that term is defined by Bill 4-21. She possesses
12 computer code of the type regulated by Bill 4-21. She is a “qualified handgun instructor” within the
13 meaning of MD Code, Public Safety, § 5-101(q).
14

15 **Defendant:**

16 38. The Defendant is Montgomery County, Maryland, with its principal place and seat
17 located in Rockville, Maryland. Montgomery County is a “person” for purposes of the relief sought
18 by this suit within the meaning of MD Code, Courts and Judicial Proceedings, § 3-401.
19

20 **COUNT I – VIOLATIONS OF THE MARYLAND CONSTITUTION**

21 39. The Plaintiffs reallege and incorporate herein by reference all the foregoing
22 allegations of this complaint.
23

24 40. Bill 4-21 regulates “matters of significant interest to the entire state.” *Cole v. Secretary*
25 *of State*, 249 Md. 425, 434, 240 A.2d 272, 278 (1968). Bill 4-21 “affects the rights of persons without
26 the area to carry on a business or to do the work incident to a trade, profession, or other calling within
27 the area.” *Steimel v. Board*, 278 Md. 1, 5, 357 A.2d 386, 388 (1976).
28

1 41. The General Assembly has repeatedly debated and introduced legislation, in both the
2 House of Delegates and in the Senate, attempting to address the subject matters regulated by Bill 4-
3 21. One such bill, House Bill 740, passed the House of Delegates in 2019. More recently, the General
4 Assembly has enacted into law Senate Bill 387 and House Bill 425. Senate Bill 387 was enacted
5 under Article II, Section 17(b) of the Maryland Constitution as Chapter 19. House Bill 425 was
6 enacted under Article II, Section 17(b) of the Maryland Constitution as Chapter 18. This legislative
7 activity is strong evidence that the matter is of general, state-wide interest, thereby demonstrating that
8 Bill 4-21 is not a “local law” within the meaning of Article XI-A, § 3 of the Maryland Constitution
9 and is thus *ultra vires*. See *Allied Vending, Inc. v. City of Bowie*, 332 Md. 279, 631 A.2d 77 (1993).

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11
12 42. Bill 4-21 has redefined the “place of public assembly” to include “a place where the
13 public may assemble, whether the place is publicly or privately owned, including a park; place of
14 worship; school; library; recreational facility; hospital; community health center; long-term facility;
15 or multipurpose exhibition facility, such as a fairgrounds or conference center.” Such “place of public
16 assembly includes all property associated with the place, such as a parking lot or grounds of a
17 building.”

18
19 43. Bill 4-21’s definition of a “place of public assembly arguably encompasses every
20 sidewalk, every restaurant, every coffee shop, and every private business in the entire County as all
21 such locales may be places where the public “may” assemble either in the present or in the future.
22 The term may even include private homes in so far as such homes “may” be used by two or more of
23 the public from time to time in the present or in the future to “assemble.” Bill 4-21 regulates the
24 totality of Montgomery County. It would be, as a practical matter, impossible for any person to travel
25 through Montgomery County without passing through an area within 100 yards of such locales now
26 regulated by Bill 4-21. Allowing county governments to expand their regulatory powers in this
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manner will create a nightmarish hodgepodge of local laws that vary from county to county, from city to city and from town to town, all of which could impose criminal penalties of the sort imposed by Montgomery County under Bill 4-21. Bill 4-21 directly and adversely affects the rights of non-residents of Montgomery County “to carry on a business or to do the work incident to a trade, profession, or other calling within the area.” *Dasch v. Jackson*, 170 Md. 251, 261, 183 A. 534, 538 (1936). By regulating and criminalizing conduct that takes place within 100 yards of such locations, Montgomery County has exceeded its authority beyond that allowed by MD Code, Criminal Law, § 4-209. Through the enactment of Bill 4-21, the County has effectively nullified the preemption provisions of Section 4-209 as well as the preemption provisions of MD Code, Public Safety, § 5-134(a), MD Code, Public Safety, § 5-207(a).

44. Bill 4-21 is not a “local law” within the meaning of Article XI–A, § 3 of the Maryland Constitution because it regulates “matters of significant interest to the entire state” and “deals with” a matter “which is of significant interest not just to any one county, but rather to more than one geographical subdivision, or even to the entire state.” *Cole v. Secretary of State*, 249 Md. 425, 434, 240 A.2d 272 (1968). Bill 4-21 also “affects the rights of persons without the area to carry on a business or to do the work incident to a trade, profession, or other calling within the area.” *Steimel v. Board*, 278 Md. 1, 5, 357 A.2d 386, 388 (1976). Bill 4-21 is thus unconstitutional under Article XI–A, § 3 of the Maryland Constitution.

45. Under Section 3 of Article XI-A of the Maryland Constitution, all laws passed by the County are “subject to the Constitution and Public General Laws of this State.” As more fully set forth in Count II, below, Bill 4-21 conflicts and is inconsistent with “General Laws” passed by the General Assembly and is thus in violation of Article XI–A, § 3 of the Maryland Constitution for this additional reason.

1 46. Under Section 6 of Article XI-A of the Maryland Constitution, the home rule powers
 2 conferred on the County by Article XI-A “shall not be construed to authorize the exercise of any
 3 powers in excess of those conferred by the Legislature upon said Counties or City as this Article sets
 4 forth.” Under Section 6 of Article XI-A, the County’s home rule powers thus do not include the power
 5 to pass any law that is in conflict or inconsistent with “General Laws” passed by the General
 6 Assembly as otherwise specified in Section 3 of Article XI-A of the Maryland Constitution. Bill 4-21
 7 conflicts and is inconsistent with “General Laws” in violation of Section 3 of Article XI-A and thus
 8 is unconstitutional and *ultra vires* under Section 6 of Article XI-A as well.
 9

10 **COUNT II – VIOLATION OF THE EXPRESS POWERS ACT**

11
 12 47. Plaintiffs reallege and incorporate herein by reference all the foregoing allegations of
 13 this complaint.

14 48. Under the Express Powers Act, MD Code, Local Government, § 10-206, Montgomery
 15 County laws must be “not inconsistent with State law” and the County is barred from enacting laws
 16 that are “preempted by or in conflict with public general law.” Under Section 3 of Article XI-A of the
 17 Maryland Constitution, all laws passed by the County are “subject to the Constitution and Public
 18 General Laws of this State.”
 19

20 49. Bill 4-21 violates these provisions of the Express Powers Act and Section 3 of Article
 21 XI-A in multiple ways:

22 a. MD Code, Criminal Law, § 4-209(a) preempts the County regulation of the
 23 “purchase, sale, taxation, transfer, manufacture, repair, ownership, possession, and transportation” of
 24 all firearms, but allows the County to regulate such matters “within 100 yards of or in a park, church,
 25 school, public building, and other place of public assembly.” By redefining a “place of public
 26 assembly” to include all places where the public “may assemble” at the present or at some unspecified
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1 date in the future and expressly including ordinary private property within that definition, the County
2 has vastly and illegally expanded the scope of its authority provided by Section 4-209 beyond the
3 bounds permitted by the language of Section 4-209. To the extent Bill 4-21 purports to apply to these
4 expanded areas, it is expressly preempted by the preemption provisions of Section 4-209(a).
5

6 *b.* Bill 4-21 bans the “transfer” of all firearms within 100 yards of the County’s
7 illegally redefined “place of public assembly.” In so far as Bill 4-21’s ban on such transfers includes
8 regulated firearms and to the extent Bill 4-21 purports to apply to expanded areas beyond those areas
9 permitted by Section 4-209, that ban is separately preempted by MD Code, Public Safety, § 5-134(a),
10 which provides that “[t]his section supersedes any restriction that a local jurisdiction in the State
11 imposes on the transfer by a private party of a regulated firearm, and the State preempts the right of
12 any local jurisdiction to regulate the transfer of a regulated firearm.”
13

14 *c.* Bill 4-21 bans the “sale” of all firearms within 100 yards of the County’s illegally
15 redefined “place of public assembly.” In so far as Bill 4-21’s ban on such sales includes rifles and
16 shotguns, and to the extent Bill 4-21 purports to apply to expanded areas beyond those areas permitted
17 by Section 4-209, that ban is preempted by MD Code, Public Safety, § 5-207(a), which provides that
18 “[t]his section supersedes any restriction that a local jurisdiction in the State imposes on the transfer
19 by a private party of a rifle or shotgun, and the State preempts the right of any local jurisdiction to
20 regulate the transfer of a rifle or shotgun.”
21
22

23 *d.* Bill 4-21 bans the “possession” of all firearms within 100 yards of the County’s
24 illegally redefined “place of public assembly.” In so far as Bill 4-21’s ban on such sales includes
25 regulated firearms, including handguns, and to the extent Bill 4-21 purports to apply to expanded
26 areas beyond those areas permitted by Section 4-209, that ban is preempted by MD Code, Public
27 Safety, § 5-133(a) which provides that “[t]his section supersedes any restriction that a local
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1 jurisdiction in the State imposes on the possession by a private party of a regulated firearm, and the
2 State preempts the right of any local jurisdiction to regulate the possession of a regulated firearm.

3 *e.* Bill 4-21 expressly precludes any person, including a parent, from giving, lending
4 or otherwise transferring to a minor a “ghost gun or a major component of a ghost gun.” In so far as
5 this provision regulates the temporary transfer of a regulated firearm, it illegally bans an activity that
6 is expressly permitted by MD Code, Public Safety, § 5-133(d), which allows a minor to transfer and
7 possess a regulated firearm under the active supervision of an adult with a parent’s permission. Such
8 transfers often include instruction in the use of firearms. To the extent that Bill 4-21 burdens such
9 instruction, Bill 4-21 is preempted by MD Code, Criminal Law, § 4-209(b)(2), which provides that
10 “[a] county, municipal corporation, or special taxing district may not prohibit the teaching of or
11 training in firearms safety, or other educational or sporting use of the items listed in subsection (a) of
12 this section.” These provisions fully apply to instruction in the use of unserialized regulated firearms
13 lawfully manufactured for personal use.

14 *f.* Bill 4-21 expressly precludes any person, including a parent, from giving, lending
15 or otherwise transferring to a minor a “ghost gun or a major component of a ghost gun,” including the
16 slide of a handgun or a barrel of a rifle. MD Code, Criminal Law, § 4-104, expressly permits a minor
17 child under the age of 16 to have access to any firearm if that access “is supervised by an individual
18 at least 18 years old” or if the minor child under the age of 16 has a certificate of firearm and hunter
19 safety issued under § 10-301.1 of the Natural Resources Article. By necessary implication, access to
20 a firearm by a minor child between the ages of 16 and 18 is likewise permitted by Section 4-104
21 without any restriction. These provisions fully apply to the transfer of unserialized firearms lawfully
22 manufactured by an individual for personal use. Bill 4-21’s ban on lending, giving, or transferring a
23 ghost gun to a minor is inconsistent with these provisions.

1 g. Bill 4-21 provides that a “person must not store or leave a ghost gun, an undetectable
2 gun, or a major component of a ghost gun or an undetectable gun, in a location that the person knows
3 or should know is accessible to a minor.” MD Code, Criminal Law, § 4-104, expressly permits a
4 minor child under the age of 16 to have access to any firearm if that access “is supervised by an
5 individual at least 18 years old” or if the minor child under the age of 16 has a certificate of firearm
6 and hunter safety issued under § 10-301.1 of the Natural Resources Article. By necessary implication,
7 access to a firearm by a minor child between the ages of 16 and 18 is permitted by Section 4-104
8 without restriction. In so far as these provisions limit access to a ghost guns or components of ghost
9 guns to a minor in a manner that Section 4-104 permits, Bill 4-21 is inconsistent with Section 4-104.
10

11 h. Bill 4-21 expressly bans the transport, in a vehicle and otherwise, of a “ghost gun,”
12 within 100 yards of the County’s illegally expanded “place of public assembly.” This ban on transport
13 is inconsistent with MD Code, Criminal Law, § 4-203(b)(3), which provides that a person is permitted
14 to transport a handgun “on the person or in a vehicle while the person is transporting the handgun to
15 or from the place of legal purchase or sale, or to or from a bona fide repair shop, or between bona fide
16 residences of the person, or between the bona fide residence and place of business of the person, if
17 the business is operated and owned substantially by the person if each handgun is unloaded and carried
18 in an enclosed case or an enclosed holster.” Transport of unloaded rifles and shotguns, including
19 unserialized rifles and shotguns, is permitted under Maryland law without restriction.
20

21 i. Bill 4-21 expressly bans the “transport,” in a vehicle and/or otherwise, of a “ghost
22 gun” within 100 yards of the County’s illegally expanded “place of public assembly.” This ban is
23 inconsistent with MD Code, Criminal Law, § 4-203(b)(5), which expressly permits “the moving by a
24 bona fide gun collector of part or all of the collector’s gun collection from place to place for public or
25 private exhibition if each handgun is unloaded and carried in an enclosed case or an enclosed holster.”
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1 Such transport and carriage of unloaded rifles and shotguns, including unserialized rifles and
2 shotguns, are permitted under Maryland law without restriction.

3 j. Bill 4-21 expressly bans the sale, transfer, possession or transport of a firearm
4 including a “ghost gun” or a “major component” of any firearm, within 100 yards of the County’s
5 illegally expanded “place of public assembly.” These bans are inconsistent with and preempted by §
6 6 of Ch. 13, of Session Laws of 1972 of Maryland, which expressly preempts all local law restrictions
7 on the wearing, carrying, or transporting of handguns in the following language:
8

9 “SEC. 6. Be it further enacted, That all restrictions imposed by the law, ordinances, or regulations of
10 the political subdivisions on the wearing, carrying, or transporting of handguns are superseded by this
11 Act, and the State of Maryland hereby preempts the right of the political subdivisions to regulate said
12 matters.” See *Montgomery County v. Atlantic Guns, Inc.*, 302 Md. 540, 543-44, 489 A.2d 1114, 1115-
13 16 (1985).
14

15 k. Bill 4-21 expressly bans the mere possession in the home of a “ghost gun” if the
16 home is within 100 yards of the County’s illegally expanded “place of public assembly.” As thus
17 defined, this ban on home possession will extend to thousands of homes within 100 yards of Bill 4-
18 21’s newly defined and illegally expanded “place of public assembly.” This ban on home possession
19 is inconsistent with MD Code, Criminal Law, § 4-203(b)(6), which expressly permits “the wearing,
20 carrying, or transporting of a handgun by a person on real estate that the person owns or leases or
21 where the person resides....” Home possession of unserialized handguns, rifles and shotguns lawfully
22 manufactured for personal use is permitted under Maryland law without restriction.
23

24 l. Bill 4-21 bans possession of a firearm or ammunition by a business, if the business
25 is within 100 yards of the County’s illegally expanded “place of public assembly.” However, Bill 4-
26 21 provides that the bans otherwise imposed by Section 57-11 of the County Code do not “apply to
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1 the possession of one firearm, and ammunition for the firearm, at a business by either the owner who
2 has a permit to carry the firearm, or one authorized employee of the business who has a permit to
3 carry the firearm.” The requirement that the owner must have “a permit to carry the firearm” is
4 inconsistent with MD Code, Criminal Law, § 4-203(b)(6), which permits “the wearing, carrying, or
5 transporting of a handgun by a person . . . within the confines of a business establishment that the
6 person owns or leases.” Such persons are not required to possess or obtain a Maryland carry permit.
7 Bill 4-21’s limitation to possession of “one” firearm by the owner is likewise inconsistent with Section
8 4-203(b)(6), as that section imposes no limitation on the number of handguns that may be possessed,
9 worn, carried or transported under this provision of Section 4-203(b)(6). Transport, wear, carriage
10 and possession of rifles and shotguns, including unserialized rifles and shotguns, in a person’s
11 business are permitted under Maryland law without restriction.

14 *m.* Bill 4-21 bans possession of a firearm or ammunition, if the business is within 100
15 yards of the County’s illegally expanded “place of public assembly.” However, Bill 4-21 provides
16 that the bans otherwise imposed by Section 57-11 of the County Code do not “apply to the possession
17 of one firearm, and ammunition for the firearm, at a business by . . . one authorized employee of the
18 business who has a permit to carry the firearm.” The requirement that the “authorized employee” must
19 have “a permit to carry the firearm” is inconsistent with MD Code, Criminal Law, § 4-203(b)(7),
20 which expressly permits “the wearing, carrying, or transporting of a handgun by a supervisory
21 employee: (i) in the course of employment; (ii) within the confines of the business establishment in
22 which the supervisory employee is employed; and (iii) when so authorized by the owner or manager
23 of the business establishment.” Such authorized persons covered by Section 4-203(b)(7) are not
24 required to possess or obtain a Maryland carry permit to carry within the business confines of the
25 employer’s business. Bill 4-21’s limitation to possession of “one” firearm by “one” authorized
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1 employee is likewise inconsistent with Section 4-203(b)(7), as that section imposes no limitation on
2 the number of handguns or ammunition that may be possessed, worn, carried or transported under
3 this provision of Section 4-203(b)(7), and imposes no limitation on the number of employees who
4 may be “authorized” by the employer under Section 4-203(b)(7). Transport, wear, carriage and
5 possession of rifles and shotguns, including unserialized rifles and shotguns, by business employees
6 are permitted under Maryland law without restriction.
7

8 n. Bill 4-21 defines “ghost gun” to include “an unfinished receiver.” Section 4-209
9 permits the County to regulate “ammunition for and components of a handgun, rifle, or shotgun,” but
10 it does not empower the County to redefine such “components” to include an “unfinished receiver.”
11 An unfinished frame or receiver that is not a “firearm” under Federal law is not a firearm under
12 Maryland law and thus an “unfinished receiver” is fully legal in under Maryland law if such a receiver
13 is sufficiently “unfinished” as to not constitute a “firearm.” By defining a “ghost gun” to include any
14 “unfinished receiver,” Bill 4-21 has gone beyond the scope allowed for local regulation by Section 4-
15 209 and is thus preempted by Section 4-209 and inconsistent with existing Maryland law.
16
17

18 o. Bill 4-21 regulates “ghost guns” in Montgomery County in a multitude of ways that
19 are in direct conflict and inconsistent with the State-wide regulation of unserialized firearms imposed
20 by Senate Bill 387, 2022 Session Laws, Chapter 19 and House Bill 425, 2022 Session Laws, Chapter
21 18, as more fully set forth in plaintiffs’ April 14, 2022, Supplemental Memorandum and in plaintiffs’
22 May 16, 2022, Memorandum In Response To Defendant’s Submission Concerning HB 425 and SB
23 387, as filed with this Court. The April 14, 2022 and May 16, 2022 memoranda are incorporated
24 herein by reference.
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**COUNT III – VIOLATION OF THE MARYLAND TAKINGS CLAUSE AND
DUE PROCESS CLAUSE**

50. Plaintiffs reallege and incorporate herein by reference all the foregoing allegations of this complaint. This Count arises under the Maryland Takings Clause, Article III, § 40 of the Maryland Constitution, and the Due Process Clause, Article 24 of the Maryland Declaration of Rights.

51. Personal property interests of Maryland residents are protected by both the Maryland Takings Clause, Article III, § 40 of the Maryland Constitution, and the Due Process Clause, Article 24 of the Maryland Declaration of Rights. These provisions are interpreted *in pari materia* with the Fifth Amendment of the United States Constitution, fully encompass personal property and may afford more protection than the Fifth Amendment. *Dua v. Comcast Cable*, 370 Md. 604, 805 A.2d 1061, 1070-72 (2002).

52. Maryland's Taking Clause and Due Process Clause are violated "[w]henver a property owner is deprived of the beneficial use of his property or restraints are imposed that materially affect the property's value, without legal process or compensation." *Serio v. Baltimore County*, 384 Md. 373, 863 A.2d 952, 967 (2004).

53. Maryland's Taking Clause and Due Process Clause govern retrospective laws. "Retrospective statutes are those 'acts which operate on transactions which have occurred or rights and obligations which existed before passage of the act.'" *Muskin v. State Dept. of Assessments and Taxation*, 422 Md. 544, 30 A.3d 962, 969 (2011).

54. Under the Maryland's Taking Clause and Due Process Clause, "[n]o matter how 'rational' under particular circumstances, the State is constitutionally precluded from abolishing a vested property right or taking one person's property and giving it to someone else." *Dua v. Comcast Cable of Maryland, Inc.*, 370 Md. 604, 623, 805 A.2d 1061 (2002).

55. The property adversely affected by the provisions of Bill 4-21 constitute protected personal property within the meaning of the Maryland Takings Clause and Due Process Clause as the term property for these purposes “embraces ‘everything which has exchangeable value or goes to make up a man’s wealth.’” *Dodds v. Shamer*, 339 Md. 540, 663 A.2d 1318, 1322 (1995). The personal property regulated by Bill 4-21 has exchangeable value. Plaintiffs have vested property rights in the continued possession and use of the property regulated by Bill 4-21.

56. Bill 4-21 is a retrospective ordinance as it will deprive the plaintiffs of the beneficial use and possession of their lawful vested property rights and property that was lawfully acquired and possessed prior to the County’s enactment of Bill 4-21. The restraints and bans that are imposed by Bill 4-21 materially affect the value of this previously lawfully acquired and possessed property, all without legal process or compensation.

57. Bill 4-21 violates Maryland Takings Clause, Article III, § 40, and the Due Process Clause, Article 24 of the Maryland Declaration of Rights. Under Maryland law, a court may enjoin a statute that violates Article 40 “unless and until condemnation proceedings in accordance with law be had, and just compensation awarded and paid for tendered.” *Department of Natural Resources v. Welsh*, 308 Md. 54, 65, 521 A.2d 313, 318 (1986). Plaintiffs are entitled to declaratory and equitable relief for the unconstitutional taking of their vested property rights by Bill 4-21.

**COUNT IV – THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT
AND ARTICLE 24 OF THE MARYLAND DECLARATION OF RIGHTS**

58. Plaintiffs reallege and incorporate herein by reference all the foregoing allegations of this complaint. This Count for violations of the Due Process Clause of the Fourteenth Amendment to the United States Constitution is brought pursuant to and arises under 42 U.S.C. § 1983. For purposes of this Count, defendant Montgomery County has acted under “color of state law” within the meaning

1 of Section 1983 in enacting Bill 4-21. This Count also arises under Article 24 of the Maryland
2 Declaration of Rights.

3 59. The Due Process Clause of the Fourteenth Amendment to the United States
4 Constitution provides that no state shall “deprive any person of life, liberty, or property, without due
5 process of law.” Article 24 of the Maryland Declaration of Rights provides that “[t]hat no man ought
6 to be taken or imprisoned or disseized of his freehold, liberties or privileges, or outlawed, or exiled,
7 or, in any manner, destroyed, or deprived of his life, liberty or property, but by the judgment of his
8 peers, or by the Law of the land.”

9
10 60. The Due Process Clause of the Fourteenth Amendment prohibits the enactment or
11 enforcement of vague legislation. *Sessions v. Dimaya*, 138 S.Ct. 1204, 1212 (2018) (“the prohibition
12 of vagueness in criminal statutes...is an ‘essential’ of due process, required by both ‘ordinary notions
13 of fair play and the settled rules of law’”). A penal statute must “define the criminal offense with
14 sufficient definiteness that ordinary people can understand what conduct is prohibited and in a manner
15 that does not encourage arbitrary and discriminatory enforcement.” *Kolender v. Lawson*, 461 U.S.
16 352, 357 (1983). “[A] vague law is no law at all.” *United States v. Davis*, 139 S. Ct. 2319, 2323
17 (2019).

18
19 61. Such a statute need not be vague in all possible applications in order to be void for
20 vagueness. *Johnson v. United States*, 576 U.S. 591, 602 (2015) (“our holdings squarely contradict the
21 theory that a vague provision is constitutional merely because there is some conduct that clearly falls
22 within the provision’s grasp”). “*Johnson* made clear that our decisions ‘squarely contradict the theory
23 that a vague provision is constitutional merely because there is some conduct that clearly falls within
24 the provision’s grasp.’” *Dimaya*, 138 S.Ct. at 1214 n.3. A court “cannot construe a criminal statute
25 on the assumption that the Government will use it responsibly,” *United States v. Stevens*, 559 U.S.

1 460, 480 (2010), and “cannot find clarity in a wholly ambiguous statute simply by relying on the
 2 benevolence or good faith of those enforcing it.” *Wollschlaeger v. Governor, Fla.*, 848F.3d 1293,
 3 1322 (11th Cir. 2017) (en banc).

4
 5 62. Article 24 of the Maryland Declaration of Rights prohibits the enactment or
 6 enforcement of vague legislation. *Galloway v. State*, 365 Md. 599, 614, 781 A.2d 851 (2001) (“The
 7 void-for-vagueness doctrine as applied to the analysis of penal statutes requires that the statute be
 8 “sufficiently explicit to inform those who are subject to it what conduct on their part will render them
 9 liable to its penalties.”). Under Article 24, a statute must provide “legally fixed standards and adequate
 10 guidelines for police ... and others whose obligation it is to enforce, apply, and administer [it]” and
 11 “must eschew arbitrary enforcement in addition to being intelligible to the reasonable person.” (Id. at
 12 615).

13
 14 63. Bill 4-21 is a penal statute as a violation of Bill 4-21 is a Class A violation that can
 15 result in a criminal fine and up to six months imprisonment for each day in which the violation
 16 continues. Bill 4-21 contains no *mens rea* requirement of any type and thus these punishments may
 17 be imposed without regard to the defendant’s intent or knowledge. Under the Due Process Clause of
 18 the Fourteenth Amendment, plaintiffs may bring a pre-enforcement action challenging Bill 4-21 as
 19 they are not required “to risk criminal prosecution to determine the proper scope of regulation.”
 20 *Dombrowski v. Pfister*, 380 U.S. 479, 487 (1965). Maryland law is in accord for purposes of allowing
 21 a pre-enforcement action arising under Article 24 of the Maryland Declaration of Rights. *Pizza di*
 22 *Joey, LLC v. Mayor of Baltimore*, 470 Md. 308, 343-44, 235 A.3d 873 (2020) (collecting cases).

23
 24 64. Bill 4-21 criminally punishes conduct that takes place within 100 yards of “a place of
 25 public assembly,” which is defined as “a place where the public may assemble, whether the place is
 26 publicly or privately owned.” Such places include, but are not limited to, “a park; place of worship;
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 28

1 school; library; recreational facility; hospital; community health center; long-term facility; or
2 multipurpose exhibition facility, such as a fairgrounds or conference center.” Bill 4-21 includes within
3 these places “all property associated with the place, such as a parking lot or grounds of a building.”
4

5 65. Bill 4-21 does not define “public,” and that term could arguably be read to include any
6 person who may be present in Montgomery County for any reason. Bill 4-21 does not define “may
7 assemble,” and thus that term could be read to include a meeting of two or more people in one place
8 for any reason, including for every-day activities such as lunch. By enlarging the ordinance to reach
9 into places where the public “may” assemble,” Bill 4-21 may be arguably read to encompass any
10 location where it is possible for two or more members of the public to meet, either in the present or
11 sometime in the undefined future. Bill 4-21 fails to provide any notice of the actual location of such
12 places and it is impossible to predict or know where two or more members of the “public” “may”
13 meet. These terms could change in their application from day to day. Plaintiffs are thus left to guess
14 at where two or more members of “public” “may assemble.”
15
16

17 66. Bill 4-21 bans conduct taking place within 100 yards of a “library,” but includes no
18 definition of “library.” Bill 4-21 deleted the statute’s former definition of “library” as limited to a
19 “public” library and expressly covers places regardless of “whether the place is publicly or privately
20 owned.” The term “library” could thus be arguably read to include any “library” of any type or size,
21 regardless of whether the library is in the home or private building if, at any time in the present or the
22 future, two or more members of the undefined public “may” assemble in that library. Plaintiffs are
23 left to guess as to the locations of such “libraries.”
24

25 67. Bill 4-21 does not define “recreational facility,” but it does delete the statute’s former
26 limitation to “government-owned or operated” recreational facility and thus the term “recreational
27 facility” could be arguably read to include a backyard swing set or private playground or other place
28

1 where “recreation” may take place. Bill 4-21 adds to statute’s preexisting scope to include a
2 “community health center” and “long-term facility,” but provides no definition for either type of
3 facility. Bill 4-21 does not define “school,” but does delete the statute’s former limitation to
4 “elementary or secondary” school, thereby arguably regulating within 100 yards of any “school” of
5 any size and of any type, private or public, including locations where any organization, of any type,
6 may present instruction of any kind. Plaintiffs are left to guess as to the locations encompassed within
7 the vague use of these terms.
8

9 68. Bill 4-21 does not define “park” but it does delete the ordinance’s former definition
10 of “park” as including only a “government owned” park that was “identified by the Maryland-
11 National Capital Park and Planning Commission.” The term “park” thus could be arguably read to
12 include any grassy spot, a commercial “park” or a tract of private land attached to a country house if
13 it possible for two or more members of the public to “assemble” in that privately owned “park.”
14 Plaintiffs are left to guess as to the locations encompassed within the vague use of “park.”
15

16 69. Bill 4-21 defines “ghost gun” to include “an unfinished receiver.” Bill 4-21 then
17 purports, to ban the sale, rental, lending or the giving of an “unfinished receiver” to a minor or
18 affording access to an “unfinished receiver” to a minor. Bill 4-21 also bans, within 100 yards of a
19 “place of public assembly,” as illegally expanded by Bill 4-21, the sale, transfer, manufacture,
20 assembly, possession or transport of an unfinished receiver, including possession of an unfinished
21 receiver in the home. Bill 4-21 does not define “unfinished receiver.” An unfinished receiver that is
22 not a “receiver” under Federal law is not a receiver under Maryland law and thus there is no definition
23 for “unfinished receiver” that could be applied to Bill 4-21. Plaintiffs are left to guess as to the
24 meaning of “unfinished receiver” as used in Bill 4-21.
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1 70. Bill 4-21 defines “major component” of a firearm to include “the slide or cylinder”
2 and, in the case of a rifle or shotgun, the “barrel.” Bill 4-21 then purports, to ban the sale, rental,
3 lending or the giving of a “major component” of a ghost gun to a minor or affording access to a “major
4 component” to a minor. Bill 4-21 also bans, within 100 yards of its illegally defined place of “public
5 assembly,” the sale, transfer, possession, or transport of a “major component.” A “major component”
6 of a firearm, as defined by Bill 4-21, is not a firearm under Federal or Maryland law and a “major
7 component” as thus defined can be lawfully obtained, transferred and transported without restrictions
8 under Federal and Maryland law. A “major component,” as thus defined by Bill 4-21, can be lawfully
9 used to build a fully *serialized* firearm for personal use. There is no practical way to distinguish a
10 “major component” that can be used to build a *non-serialized* firearm from a major component that
11 can be used to build a *serialized* firearm. Bill 4-21 thus arguably can be read as banning the building
12 of *any serialized* firearm, including a firearm that is not a “ghost gun” under the Bill 4-21’s own
13 definition of a “ghost gun.” Bill 4-21 is self-contradictory, vague and leaves enforcement of this
14 provision to the arbitrary and discriminatory discretion of law enforcement officials.

15 71. Bill 4-21’s regulation of places where two or more members of the “public” “may”
16 assemble in the present or unknowable future provides no reasonable notice of the actual locations
17 that are criminally regulated by Bill 4-21. Bill 4-21’s use of vague and undefined terms deprives
18 ordinary people, including plaintiffs, of the ability to understand what conduct is prohibited and what
19 conduct is not. Bill 4-21’s use of vague terms, including its reach into the home and other private
20 property, permits and encourages arbitrary and discriminatory enforcement of its provisions in the
21 sanctity of the home and other places protected by the Fourth Amendment of the United States
22 Constitution. Bill 4-21 provides no standards for enforcement by law enforcement personnel or by
23 other officials of the County who may be charged with its enforcement. Rather, Bill 4-21 hands off
24

1 “to unelected prosecutors and judges,” the duty of defining criminal behavior thorough *ad hoc*.
2 discretionary enforcement decisions. *Davis*, 139 S.Ct. at 2323. Bill 4-21 is accordingly void for
3 vagueness under the Due Process Clause of the Fourteenth Amendment and Article 24 of the
4 Maryland Declaration of Rights, both facially and as applied to one or more of the individual
5 plaintiffs.

6
7 72. Each of the plaintiffs has engaged and intends to engage in conduct arguably regulated
8 by the unconstitutionally vague provisions of Bill 4-21, including the actual or constructive possession
9 of firearms, major components and “unfinished receivers.” Each of the plaintiffs is and has been
10 chilled in the actions they may take by the prospect of enforcement of Bill 4-21’s unconstitutionally
11 vague provisions. Each of the plaintiffs and MSI’s members are hindered or chilled in their right to
12 live or work in Montgomery County or to otherwise travel through Montgomery County by the threat
13 of arbitrary or discriminatory enforcement of the unconstitutionally vague provisions of Bill 4-21.
14 Each of the plaintiffs has been harmed and is imminently threatened with future harm by the prospect
15 of enforcement of the unconstitutionally vague provisions of Bill 4-21.
16

17
18 73. Pursuant to 42 U.S.C. § 1983, plaintiffs are entitled to declaratory and equitable relief
19 and compensatory damages, including nominal damages, for the foregoing violations of their Due
20 Process rights under the Fourteenth Amendment. *Uzuegbunam v. Preczewski*, 141 S.Ct. 792 (2021).
21 Plaintiffs are likewise entitled to reasonable attorneys’ fees and costs pursuant to 42 U.S.C. § 1988,
22 for the foregoing violations of their Due Process rights under the Fourteenth Amendment. Plaintiffs
23 are entitled to declaratory and equitable relief for their claims arising under Article 24 of the Maryland
24 Declaration of Rights.
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COUNT V -- SECOND AMENDMENT

74. The Plaintiffs reallege and incorporate herein by reference all the foregoing allegations of this complaint.

75. The Second Amendment to the United States Constitution provides: “A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.” The Supreme Court has squarely held that the Second Amendment bestows an individual right to keep and bear arms and that right may be exercised by all responsible, law-abiding Americans. *District of Columbia v. Heller*, 554 U.S. 570 (2008). The Second Amendment is applicable to the States as incorporated through the Due Process Clause of Fourteenth Amendment and is a fundamental right. *McDonald v. City of Chicago*, 561 U.S. 742 (2010).

76. On June 23, 2022, the Supreme Court decided *New York State Rifle & Pistol Association, Inc. v. Bruen*, 142 S.Ct. 2111 (2022). In *Bruen*, the Supreme Court held that the Second Amendment right to bear arms means “a State may not prevent law-abiding citizens from publicly carrying handguns because they have not demonstrated a special need for self-defense.” Slip op. at 24-25 n.8. This holding abrogates the holding of the Maryland Court of Appeals in *Williams v. State*, 417 Md. 479, 496, 10 A.3d 1167 (2011), that the Second Amendment does not apply outside the home. Under *Bruen*, “the Second Amendment guarantees a general right to public carry.” *Bruen*, slip op. at 24.

77. The *Bruen* Court struck down as unconstitutional New York’s “proper cause” requirement for issuance of a permit to carry a handgun in public. The Court went on to reject the “means-end,” two-step, intermediate scrutiny analysis used by the lower courts to sustain gun regulations, holding that “[d]espite the popularity of this two-step approach, it is one step too many.” *Bruen*, slip op. at 10. The Court ruled that “the standard for applying the Second Amendment is as

1 follows: When the Second Amendment’s plain text covers an individual’s conduct, the Constitution
2 presumptively protects that conduct. The government must then justify its regulation by
3 demonstrating that it is consistent with the Nation’s historical tradition of firearm regulation.” *Bruen*,
4 slip op. at 15.

6 78. The historical analogue required by *Bruen* to justify a firearms regulation looks to
7 1791 or, at the latest, 1868, when the 14th Amendment was adopted. See *Bruen*, slip op. at 25-26.
8 That is because “‘Constitutional rights are enshrined with the scope they were understood to have
9 when the people adopted them.’” *Bruen*, slip op. at 25, quoting *District of Columbia v. Heller*, 554
10 U.S. 570, 634–635 (2008). 20th century and late 19th century statutes and regulations do “not provide
11 insight into the meaning of the Second Amendment when it contradicts earlier evidence.” *Bruen*, slip
12 op. at 58 n.28. Under *Bruen*, the historical analogue necessary to justify regulation must be “a well-
13 established and representative historical analogue.” *Bruen*, slip op. at 21. Historical “outlier”
14 requirements of a few jurisdictions are to be disregarded. *Bruen*, slip op. at 46 n.22, 57, 62. This
15 historical analysis is a legal inquiry and does not require fact-finding by a court. *Bruen*, slip op. at 24-
16 25 n.8.

19 79. *Bruen* holds that governments may regulate the public possession of firearms at
20 “legislative assemblies, polling places, and courthouses” and notes that governments may also
21 regulate firearms “in” schools and government buildings. *Bruen*, slip op. at 21, citing *Heller*, 554 U.S.
22 at 599. *Bruen* states that “courts can use analogies to those historical regulations of ‘sensitive places’
23 to determine that modern regulations prohibiting the carry of firearms in new and analogous sensitive
24 places are constitutionally permissible.” (Id.). The *Bruen* Court rejected New York’s “attempt to
25 characterize New York’s proper-cause requirement as “a ‘sensitive-place’ law,” ruling that
26 “expanding the category of ‘sensitive places’ simply to all places of public congregation that are not
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1 isolated from law enforcement defines the category of ‘sensitive places’ far too broadly.” Slip op. at
2 22. As the Court explained, “[p]ut simply, there is no historical basis for New York to effectively
3 declare the island of Manhattan a ‘sensitive place’ simply because it is crowded and protected
4 generally by the New York City Police Department.” (Id.).

5
6 80. The government bears the burden of proof to show the historical presence of such
7 “well-established and representative” historical analogue regulations. See *Bruen*, at 52 (“we are not
8 obliged to sift the historical materials for evidence to sustain New York’s statute. That is respondents’
9 burden.”). Public safety concerns are not part of the analysis and cannot be used to justify any statute
10 or regulation that restricts the general right to carry arms in public. Under *Bruen*, “when the Second
11 Amendment’s plain text covers an individual’s conduct, the Constitution presumptively protects that
12 conduct.” Slip op. at 8. A government “may not simply posit that the regulation promotes an important
13 interest,” but rather “the government must demonstrate that the regulation is consistent with this
14 Nation’s historical tradition of firearm regulation.” Id.

15
16
17 81. The text of the Second Amendment, as construed by the Supreme Court and lower
18 courts, indisputably covers the “possession, sale, transport, and transfer” of firearms and ammunition,
19 as regulated by Bill 4-21 and Section 57-11 of the County Code. Bill 4-21 and County Code Section
20 57-11 are not supported by any showing that the regulatory burdens on possession, transport, transfer
21 or sale of firearms and/or ammunition that these regulatory provisions inflict are “consistent with this
22 Nation’s historical tradition of firearm regulation.” Nothing in *Bruen* can be read to allow a State (or
23 a municipality) to regulate or ban firearms at every location where the “public may assemble”
24 regardless of whether the place is “publicly or privately owned,” in the manner specified by Bill 4-
25 21.
26
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1 82. There is no appropriate historical analogue that would permit the County to ban all
2 possession, sale, transfer or transport of firearms or ammunition in or at a church or a park, much less
3 in any “other place of public assembly” as vastly defined by the County to include any place where
4 the public “may assemble” regardless of whether such place is on public or private land. Nor is there
5 any appropriate historical analogue for any such regulation within 100 yards of such locations.
6 Montgomery County is no more a “sensitive place” than is Manhattan.

8 83. Under the Second Amendment, the County may presumptively enact otherwise lawful
9 firearms and ammunition regulations for the five, specific locations identified in *Bruen* and *Heller*,
10 viz, “in” schools, public buildings, polling places, courthouses and legislative assemblies, to the extent
11 such regulations are otherwise authorized by State law. The County may not enact or enforce any
12 provision of the County Code that operates in such a way as to “deny ordinary citizens their right to
13 public carry.” *Bruen*, slip op. at 30 n.9. The County may not enact or enforce firearms or ammunition
14 regulations for any location or place *beyond* the five, specific locations identified in *Bruen* and *Heller*,
15 viz, “in” schools, public buildings, polling places, courthouses and legislative assemblies, without
16 proving that “a well-established and representative historical analogue” for any such regulation exists.
17 The County has not done so with respect to the locations regulated by Bill 4-21 and County Code
18 Section 57-11.
19
20

21 84. Bill 4-21 and Section 57-11 of the County Code are *facially* unconstitutional under
22 the Second Amendment to the extent that Bill 4-21 and County Code Section 57-11 purport to impose
23 any regulatory restrictions on the possession, transfer, sale or transport of firearms and ammunition
24 in or at any place other than the five specific locations specified in *Bruen* and *Heller*. Bill 4-21 and
25 Section 57-11 of the County Code are *facially* unconstitutional under the Second Amendment to the
26 extent that Bill 4-21 and County Code Section 57-11 purport to impose any regulatory restrictions on
27
28

1 the possession, transfer, sale or transport of firearms and ammunition in or at any place within 100
2 yards of *any* location.

3 85. Bill 4-21 and Section 57-11 of the County Code are unconstitutional under the Second
4 Amendment *as applied* to the named plaintiffs and to any member of plaintiff MSI to the extent that
5 Bill 4-21 and Section 57-11 purport to impose any regulatory restrictions on the possession, transfer,
6 sale or transport of firearms or ammunition in or at any place other than the five specific locations
7 specified in *Bruen* and *Heller*. Bill 4-21 and Section 57-11 of the County Code are unconstitutional
8 under the Second Amendment *as applied* to the named plaintiffs and to any member of plaintiff MSI
9 to the extent that Bill 4-21 and County Code Section 57-11 purport to impose any regulatory
10 restrictions on the possession, transfer, sale or transport of firearms or ammunition in or at any place
11 within 100 yards of *any* location.

14 86. To the extent that MD Code, Criminal Law, § 4-209(b) purports to authorize County
15 or local regulation for areas other than the five locations, or in any manner or scope beyond the manner
16 or scope permitted in *Heller* and *Bruen*, it is likewise unconstitutional under the Second Amendment
17 and thus cannot legally or constitutionally authorize such local regulation. To the extent that MD
18 Code, Criminal Law, § 4-209(b) purports to authorize County or local regulation on the possession,
19 transfer, sale or transport of firearms or ammunition in or at any place within 100 yards of *any* location
20 it is likewise unconstitutional under the Second Amendment and thus cannot legally or
21 constitutionally authorize any such local regulation.

24 87. Pursuant to 42 U.S.C. § 1983, plaintiffs are entitled to declaratory and equitable relief
25 and compensatory damages, including nominal damages, for the foregoing violations of their Second
26 Amendment rights. *Uzuegbunam v. Preczewski*, 141 S.Ct. 792 (2021). Plaintiffs are likewise entitled
27

1 to reasonable attorneys' fees and costs pursuant to 42 U.S.C. § 1988, for the foregoing violations of
2 their Second Amendment rights.

3
4 **PRAYER FOR RELIEF**

5 WHEREFORE, the Plaintiffs respectfully request:

6 A. That this Court issue a declaratory judgment that Bill 4-21 is not a "local law," and is in
7 conflict and inconsistent with the "General Law" as enacted by the General Assembly is thus
8 unconstitutional under Article XI-A, § 3 and Article XI-A, § 6, of the Maryland Constitution, as
9 more fully set forth in Count I above;

10
11 B. That this Court issue a declaratory judgment that Bill 4-21 violates the Express Powers
12 Act, MD Code, Local Government, § 10-206, in that it is in conflict or inconsistent with, and/or
13 preempted by, Maryland statutes, as more fully set forth in Count II, above;

14 C. That this Court issue a declaratory judgment that Bill 4-21 violates the Maryland Takings
15 Clause, Article III § 40, and the Due Process Clause of Article 24 of the Maryland Declaration of
16 Rights, in so far as it deprives plaintiffs and MSI members of the beneficial use of their lawfully
17 acquired, vested property rights, as more fully set forth in Count III above, enjoin enforcement of Bill
18 4-21 until compensation is paid, calculate the amount of compensation due, and order the County to
19 pay such compensation;

20
21 D. That this Court issue a declaratory judgment that Bill 4-21 is void for vagueness under the
22 Due Process Clause of the Fourteenth Amendment to the United States Constitution and Article 24
23 of the Maryland Declaration of Rights, as more fully set forth in Count IV above;

24
25 E. That this Court issue a declaratory judgment that Bill 4-21 and County Code Section 57-
26 11 are unconstitutional under the Second Amendment, as more fully set forth in Count V above.
27
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1 F. That this Court find that all plaintiffs have been and/or will be irreparably harmed by the
2 conduct of defendant challenged in Counts I, II, III, IV and V, and enter a preliminary and permanent
3 injunction barring the County from enforcing Bill 4-21 and County Code Section 57-11 against
4 plaintiffs and the members of MSI;

5
6 G. That this Court award plaintiffs compensatory damages for the County's violations of the
7 plaintiffs' Fourteenth Amendment constitutional rights, including without limitation, nominal
8 damages, as authorized by 42 U.S.C. § 1983;

9
10 H. That this Court award attorney's fees and costs against defendant, as authorized by 42
11 U.S.C. § 1988;

12 I. That this Court award the plaintiffs such other and further relief as in law and justice they
13 may be entitled to receive.

14 **JURY DEMAND**

15 COME NOW the Plaintiffs, by and through counsel, demand a trial by jury as to all
16 issues triable by jury in this matter.

17
18 Respectfully submitted,

19
20 

21
22 MARK W. PENNAK
23 Maryland Shall Issue, Inc.
24 9613 Harford Rd
25 Ste C #1015
26 Baltimore, MD 21234-21502
27 mpennak@marylandshallissue.org
28 Phone: (301) 873-3671
MD Atty No. 1905150005

Date: July 22, 2022

Counsel for Plaintiffs

IN CIRCUIT COURT FOR MONTGOMERY COUNTY, MARYLAND

MARYLAND SHALL ISSUE, INC., ET AL,

Plaintiffs,

vs.

MONTGOMERY COUNTY, MARYLAND,

Defendant.

Case No.:

DECLARATION OF
DANIEL CARLIN-WEBER

COMES NOW, the declarant, DANIEL CARLIN-WEBER, and hereby solemnly declares under penalties of perjury and upon personal knowledge that the contents of the following declaration are true:

1. My name is DANIEL CARLIN-WEBER and I am the Chairman of the Board of Directors of MARYLAND SHALL ISSUE, INC., a named plaintiff in the above captioned matter. I execute this declaration on behalf of MARYLAND SHALL ISSUE, INC.

2. I have read and otherwise reviewed the allegations of the Complaint in this matter. I hereby adopt and declare that the factual allegations in the complaint that relate or refer to MARYLAND SHALL ISSUE, INC., are true and correct to the best of my knowledge and belief.

Dated this day of MAY 27, 2021:



DANIEL CARLIN-WEBER
Chairman of the Board of Directors, Maryland Shall
Issue, Inc.

IN CIRCUIT COURT FOR MONTGOMERY COUNTY, MARYLAND

MARYLAND SHALL ISSUE, INC., ET AL,

Plaintiffs,

vs.

MONTGOMERY COUNTY, MARYLAND,

Defendant

Case No.:

DECLARATION OF
PLAINTIFF ANDREW RAYMOND

COMES NOW, the declarant, ANDREW RAYMOND, and hereby solemnly declares under penalties of perjury and upon personal knowledge that the contents of the following declaration are true:

1. My name is ANDREW RAYMOND and I am a named plaintiff in the above captioned matter and the co-owner of ENGAGE ARMAMENT LLC, which is also a named plaintiff in this matter. I execute this declaration on behalf of myself and of ENGAGE ARMAMENT LLC.

2. I have read and otherwise reviewed the allegations of the Complaint in this matter. I hereby adopt and declare that the factual allegations in the complaint that relate or refer to myself and ENGAGE ARMAMENT LLC, are true and correct to the best of my knowledge and belief.

Dated this day of MAY 27, 2021:


ANDREW RAYMOND

IN CIRCUIT COURT FOR MONTGOMERY COUNTY, MARYLAND

MARYLAND SHALL ISSUE, INC., ET AL,

Plaintiffs,

vs.

MONTGOMERY COUNTY, MARYLAND,

Defendant

Case No.:

DECLARATION OF
PLAINTIFF CARLOS RABANALES

COMES NOW, the declarant, CARLOS RABANALES, and hereby solemnly declares under penalties of perjury and upon personal knowledge that the contents of the following declaration are true:

1. My name is CARLOS RABANALES and I am a named plaintiff in the above captioned matter and the co-owner of ENGAGE ARMAMENT LLC, which is also a named plaintiff in this matter. I execute this declaration on behalf of myself and of ENGAGE ARMAMENT LLC.

2. I have read and otherwise reviewed the allegations of the Complaint in this matter. I hereby adopt and declare that the factual allegations in the complaint that relate or refer to myself and ENGAGE ARMAMENT LLC, are true and correct to the best of my knowledge and belief.

Dated this day of MAY 27, 2021:



CARLOS RABANALES

6 vs.

DECLARATION OF

7 Case 8:22-cv-01967-TDC Document 8-1 Filed 08/08/22 Page 62 of 244
8 MONTGOMERY COUNTY, MARYLAND,

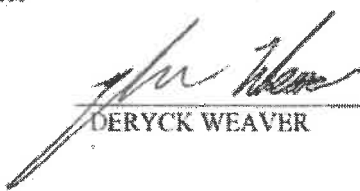
9 Defendant

10 COMES NOW, the declarant, DERYCK WEAVER, and hereby solemnly declares under penalties
11 of perjury and upon personal knowledge that the contents of the following declaration are true:

12 1. My name is DERYCK WEAVER and I am a named plaintiff in the above captioned matter.

13 2. I have read and otherwise reviewed the allegations of the Complaint in this matter. I hereby
14 adopt and declare that the factual allegations in the complaint that relate or refer to myself are true and correct to the
15 best of my knowledge and belief.

16 Dated this day of MAY 27, 2021:

17 
18 DERYCK WEAVER
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28

DECLARATION OF PLAINTIFF DERYCK WEAVER - 1

IN CIRCUIT COURT FOR MONTGOMERY COUNTY, MARYLAND

MARYLAND SHALL ISSUE, INC., ET AL,

Plaintiffs,

vs.

MONTGOMERY COUNTY, MARYLAND,

Defendant

Case No.:

DECLARATION OF
PLAINTIFF BRANDON FERRELL

COMES NOW, the declarant, BRANDON FERRELL, and hereby solemnly declares under penalties of perjury and upon personal knowledge that the contents of the following declaration are true:

1. My name is BRANDON FERRELL and I am a named plaintiff in the above captioned matter.

2. I have read and otherwise reviewed the allegations of the Complaint in this matter. I hereby adopt and declare that the factual allegations in the complaint that relate or refer to myself are true and correct to the best of my knowledge and belief.

Dated this day of MAY 27, 2021:



BRANDON FERRELL

IN CIRCUIT COURT FOR MONTGOMERY COUNTY, MARYLAND

MARYLAND SHALL ISSUE, INC., ET AL,

Plaintiffs,

vs.

MONTGOMERY COUNTY, MARYLAND,

Defendant

Case No.:

DECLARATION OF
PLAINTIFF RONALD DAVID

COMES NOW, the declarant, RONALD DAVID, and hereby solemnly declares under penalties of perjury and upon personal knowledge that the contents of the following declaration are true:

1. My name is RONALD DAVID and I am a named plaintiff in the above captioned matter, and the owner of I.C.E. FIREARMS & DEFENSIVE TRAINING, LLC, which is also a named plaintiff in this matter. I execute this declaration on behalf of myself and on behalf of I.C.E. FIREARMS & DEFENSIVE TRAINING, LLC.

2. I have read and otherwise reviewed the allegations of the Complaint in this matter. I hereby adopt and declare that the factual allegations in the complaint that relate or refer to myself and to I.C.E. FIREARMS & DEFENSIVE TRAINING, LLC, are true and correct to the best of my knowledge and belief.

Dated this day of MAY 27, 2021:


RONALD DAVID

IN CIRCUIT COURT FOR MONTGOMERY COUNTY, MARYLAND

MARYLAND SHALL ISSUE, INC., ET AL,

Plaintiffs,

vs.

MONTGOMERY COUNTY, MARYLAND,

Defendant

Case No.:

DECLARATION OF
PLAINTIFF NANCY DAVID

COMES NOW, the declarant, NANCY DAVID, and hereby solemnly declares under penalties of perjury and upon personal knowledge that the contents of the following declaration are true:

1. My name is NANCY DAVID and I am a named plaintiff in the above captioned matter.

2. I have read and otherwise reviewed the allegations of the Complaint in this matter. I hereby adopt and declare that the factual allegations in the complaint that relate or refer to myself are true and correct to the best of my knowledge and belief.

Dated this day of MAY 27, 2021:



NANCY DAVID

EXHIBIT A

Bill No. 4-21
 Concerning: Weapons - Protection of
Minors and Public Places -
Restrictions Against Ghost Guns and
Undetectable Guns
 Revised: 04/06/2021 Draft No. 5
 Introduced: January 19, 2021
 Enacted: April 6, 2021
 Executive: April 16, 2021
 Effective: July 16, 2021
 Sunset Date: None
 Ch. 7, Laws of Mont. Co. 2021

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

Lead Sponsor: Council Vice-President Alborno
 Co-Sponsors: Council President Hucker, Councilmembers Katz, Jawando, Navarro, Friedson, Rice,
 Riemer and Glass

AN ACT to:

- (1) define terms related to firearm laws;
- (2) restrict the [[manufacture,]] possession, use, sale, and transfer of ghost guns, undetectable guns, and certain other firearms with respect to minors;
- (3) restrict the [[manufacture,]] possession, use, sale, and transfer of ghost guns, undetectable guns, and certain other firearms within 100 yards of places of public assembly; and
- (4) generally amend the law regarding firearms and other weapons.

By amending

Montgomery County Code
 Chapter 57, Weapons
 Sections 57-1, 57-7, and 57-11

By adding

Montgomery County Code
 Chapter 57, Weapons
 Section 57-16

BoldfaceUnderlining**[Single boldface brackets]**Double underlining**[[Double boldface brackets]]**

* * *

*Heading or defined term.**Added to existing law by original bill.**Deleted from existing law by original bill.**Added by amendment.**Deleted from existing law or the bill by amendment.**Existing law unaffected by bill.*

The County Council for Montgomery County, Maryland approves the following Act:

1 **Sec. 1. Sections 57-1, 57-7, and 57-11 are amended, and Section 57-16 is**
2 **added, as follows:**

3 **57-1. Definitions.**

4 In this Chapter, the following words and phrases have the following meanings:

5 3D printing process: a process of making a three-dimensional, solid
6 object using a computer code or program, including any process in
7 which material is joined or solidified under computer control to create a
8 three-dimensional object.

9 * * *

10 *Gun or firearm*: Any rifle, shotgun, revolver, pistol, ghost gun,
11 undetectable gun, air gun, air rifle or any similar mechanism by
12 whatever name known which is designed to expel a projectile through a
13 gun barrel by the action of any explosive, gas, compressed air, spring or
14 elastic.

15 (1) The term “antique firearm” means (a) any firearm (including any
16 firearm with a matchlock, flintlock, percussion cap, or similar
17 type of ignition system) manufactured in or before 1898; and (b)
18 any replica of any firearm described in subparagraph (a) if such
19 replica (i) is not designed or redesigned or using rimfire or
20 conventional centerfire fixed ammunition, or (ii) uses rimfire or
21 conventional centerfire fixed ammunition which is no longer
22 manufactured in the United States and which is not readily
23 available in the ordinary channels of commercial trade.

24 (2) “Ghost gun” means a firearm, including an unfinished frame or
25 receiver, that lacks a unique serial number engraved or cased in
26 metal alloy on the frame or receiver by a licensed manufacturer,
27 maker or importer under federal law or markings in accordance

28 with 27 C.F.R. § 479.102. It does not include a firearm that has
29 been rendered permanently inoperable, or a firearm that is not
30 required to have a serial number in accordance with the Federal
31 Gun Control Act of 1968.

32 (3) “Handgun” means any pistol, revolver or other firearm capable of
33 being concealed on the person, including a short-barreled shotgun
34 and a short-barreled rifle as these terms are defined below.
35 “Handgun” does not include a shotgun, rifle, or antique firearm.

36 [(3)] (4) “Rifle” means a weapon designed or redesigned, made or
37 remade, and intended to be fired from the shoulder and designed
38 or redesigned and made or remade to use the energy of the
39 explosive in a fixed metallic cartridge to fire only a single
40 projectile through a rifled bore for each single pull of the trigger.

41 [(4)] (5) The term “short-barreled rifle” means a rifle having one
42 (1) or more barrels less than sixteen (16) inches in length and any
43 weapon made from a rifle (whether by alternation, modification
44 or otherwise) if such weapon, as modified, has an overall length
45 of less than twenty-six (26) inches.

46 [(5)] (6) The term “short-barreled shotgun” means a shotgun having
47 one (1) or more barrels less than eighteen (18) inches in length
48 and any weapon made from a shotgun (whether by alteration,
49 modification or otherwise) if such weapon as modified has an
50 overall length of less than twenty-six (26) inches.

51 [(6)] (7) “Shotgun” means a weapon designed or redesigned, made
52 or remade, and intended to be fired from the shoulder and
53 designed or redesigned and made or remade to use the energy of
54 the explosive in a fixed shotgun shell to fire through a smooth

bore either a number of ball shot or a single projectile for each single pull of the trigger.

(8) “Undetectable gun” means:

(A) a firearm that, after the removal of all its parts other than a major component, is not detectable by walk-through metal detectors commonly used at airports or other public buildings;

(B) a major component that, if subjected to inspection by the types of detection devices commonly used at airports or other public buildings for security screening, would not generate an image that accurately depicts the shape of the component; or

(C) a firearm manufactured wholly of plastic, fiberglass, or through a 3D printing process.

* * *

Major component means, with respect to a firearm:

(1) the slide or cylinder or the frame or receiver; and

(2) in the case of a rifle or shotgun, the barrel.

Minor: An individual younger than 18 years old.

* * *

Place of public assembly: A “place of public assembly” is a place where the public may assemble, whether the place is publicly or privately owned, including a [government owned] park [identified by the Maryland-National Capital Park and Planning Commission]; place of worship; [elementary or secondary] school; [public] library; [government-owned or -operated] recreational facility; hospital; community health center; long-term facility; or multipurpose exhibition

82 facility, such as fairgrounds or a conference center. A place of public
83 assembly includes all property associated with the place, such as a
84 parking lot or grounds of a building.

85 * * *

86 **57-7. Access to guns by minors.**

87 (a) A person must not give, sell, rent, lend, or otherwise transfer any rifle or
88 shotgun or any ammunition or major component for these guns in the
89 County to a minor. This subsection does not apply when the transferor
90 is at least 18 years old and is the parent, guardian, or instructor of the
91 minor, or in connection with a regularly conducted or supervised
92 program of marksmanship or marksmanship training.

93 (b) An owner, employee, or agent of a gun shop must not allow a minor to,
94 and a minor must not, enter the gun shop unless the minor is
95 accompanied by a parent or other legal guardian at all times when the
96 minor is in the gun shop.

97 (c) A person must not give, sell, rent, lend, or otherwise transfer to a minor:

98 (1) a ghost gun or major component of a ghost gun;

99 (2) an undetectable gun or major component of an undetectable gun;

100 or

101 (3) a computer code or program to make a gun through a 3D printing
102 process.

103 (d) A person must not [[manufacture or assemble]] purchase, sell, transfer,
104 possess, or transfer a ghost gun, including [[making]] a gun created
105 through a 3D printing process, in the presence of a minor.

106 (e) A person must not store or leave a ghost gun, an undetectable gun, or a
107 major component of a ghost gun or an undetectable gun, in a location
108 that the person knows or should know is accessible to a minor.

109 [(c)] (f) This section must be construed as broadly as possible within the
110 limits of State law to protect minors.

111 **57-11. -Firearms in or near places of public assembly.**

112 (a) [A] In or within 100 yards of a place of public assembly, a person must
113 not:

- 114 (1) sell, transfer, ~~[[manufacture, assemble,]]~~ possess, or transport a
115 ghost gun, undetectable gun, handgun, rifle, or shotgun, or
116 ammunition or major component for these firearms[, in or within
117 100 yards of a place of public assembly]; or
118 (2) sell, transfer, possess, or transport[[, or use a computer code to
119 create,]] a firearm created through a 3D printing process.

120 -(b) This section does not:

- 121 (1) prohibit the teaching of firearms safety or other educational or
122 sporting use in the areas described in subsection (a);
123 (2) apply to a law enforcement officer, or a security guard licensed to
124 carry the firearm;
125 (3) apply to the possession of a firearm or ammunition, other than a
126 ghost gun or an undetectable gun, in the person's own home;
127 (4) apply to the possession of one firearm, and ammunition for the
128 firearm, at a business by either the owner who has a permit to
129 carry the firearm, or one authorized employee of the business
130 who has a permit to carry the firearm;
131 (5) apply to the possession of a handgun by a person who has
132 received a permit to carry the handgun under State law; or
133 ((6) apply to separate ammunition or an unloaded firearm:

- 134 (A) transported in an enclosed case or in a locked firearms rack
135 on a motor vehicle, unless the firearm is a ghost gun or an
136 undetectable gun; or
- 137 (B) being surrendered in connection with a gun turn-in or
138 similar program approved by a law enforcement agency.

139 * * *

140 **57-15. Penalty.**

141 Any violation of this Chapter or a condition of an approval certificate issued
142 under this Chapter is a Class A violation to which the maximum penalties for a Class
143 A violation apply. Any violation of Section 57-8 is a Class A civil violation.

144 **57-16. Reporting requirement.**

- 145 (a) The County Police Department must submit a report annually to the
146 County Executive and the County Council regarding the availability and
147 use of ghost guns and undetectable guns in the County.
- 148 (b) The report must include the number of ghost guns and undetectable
149 guns recovered by the Department during the prior year.
- 150 (c) Each report must be available to the public on the Police Department's
151 website.

Approved:



4/7/2021

Tom Hucker, President, County Council

Date

Approved:

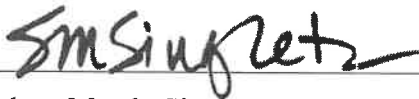


4/16/2021

Marc Elrich, County Executive

Date

This is a correct copy of Council action.



4/16/2021

Selena Mendy Singleton, Esq., Clerk of the Council

Date



President
Mark W. Pennak

February 9, 2021

WRITTEN TESTIMONY OF MARK W. PENNAK, PRESIDENT, MSI, IN OPPOSITION TO BILL 4-21 (Corrected)

I am the President of Maryland Shall Issue ("MSI"). Maryland Shall Issue is an all-volunteer, non-partisan organization dedicated to the preservation and advancement of gun owners' rights in Maryland. It seeks to educate the community about the right of self-protection, the safe handling of firearms, and the responsibility that goes with carrying a firearm in public. I am also an attorney and an active member of the Bar of the District of Columbia and the Bar of Maryland. I recently retired from the United States Department of Justice, where I practiced law for 33 years in the Courts of Appeals of the United States and in the Supreme Court of the United States. I am an expert in Maryland firearms Law, federal firearms law and the law of self-defense. I am also a Maryland State Police certified handgun instructor for the Maryland Wear and Carry Permit and the Maryland Handgun Qualification License and a certified NRA instructor in rifle, pistol and personal protection in the home, personal protection outside the home, muzzle loading as well as a range safety officer. I write in OPPOSITION TO BILL 4-21. For the reasons set forth below, this bill is preempted by State law and, if enacted, would be violative of the First Amendment and the Second Amendment of the Constitution. The Council would be well-advised to stay its hand and allow the General Assembly take the lead in these matters.

The Bill Is Preempted:

State law, MD Code, Criminal Law, § 4-209, broadly preempts "the right of a county, municipal corporation, or special taxing district to regulate the purchase, sale, taxation, transfer, manufacture, repair, ownership, possession, and transportation of: (1) a handgun, rifle, or shotgun; and (2) ammunition for and components of a handgun, rifle, or shotgun." The statute provides, as an exception, that the locality may regulate these subject matters '(i) with respect to minors; (ii) with respect to law enforcement officials of the subdivision; and (iii) except as provided in paragraph (2) of this subsection, within 100 yards of or in a park, church, school, public building, and other place of public assembly."

This bill violates Section 4-209 in multiple ways. First, and perhaps most egregiously, the bill defines a place of public assembly to include "a place where the public may assemble, whether the place is publicly or privately owned." The bill thus defines public "assembly" as a privately or publicly owned place where people "may assemble" and is thus utterly circular. It includes places where persons "may" assemble, not merely places where people do assemble or even regularly assemble.

It could thus include any place, private or public, that people “may” assemble in the unknowable future.

Such an extraordinarily broad, circular definition is no definition at all. It is so vague as to violate the Due Process Clause of the Fourteenth Amendment. See *Giovani Carandola, Ltd. v. Fox*, 470 F.3d 1074, 1079 (4th Cir. 2006) (recognizing that “[a] statute is impermissibly vague if it either (1) fails to provide people of ordinary intelligence a reasonable opportunity to understand what conduct it prohibits or (2) authorizes or even encourages arbitrary and discriminatory enforcement” (internal quotations omitted)). See also *Grayned v. City of Rockford*, 408 U.S. 104, 108-109, (1972) (“A vague law impermissibly delegates basic policy matters to policemen, judges, and juries for resolution on an ad hoc and subjective basis”). This body has an obligation to define regulatory prohibitions, not make them so vague as to ensnare the innocent or lead to arbitrary enforcement, especially where the law affects Constitutional rights. *City of Chicago v. Morales*, 527 U.S. 41, 54 (1999). A statute will be deemed unconstitutionally vague if it (1) “fails to give ordinary people fair notice of the conduct it punishes,” or (2) is “so standardless that it invites arbitrary enforcement.” *Johnson v. United States*, 576 U.S. 591, 595 (2015). The definition of place of public assembly fails that test.

Even more fundamentally, the bill’s definition of place of public assembly is in conflict with Section 4-209. The proviso in Section 4-209 that allows the County to regulate firearms in within a 100 yards of “another place of public assembly” must read in context. See, e.g., *Berry v. Queen*, 469 Md. 674, 690, 233 A.3d 42 (2020) (“In order to interpret a word’s specific meaning in a particular statute we look to the context in which the word is used.”) (citation omitted). That proviso does not allow the County to regulate places where people “may” assemble, it allows regulation of a place within 100 yards “**another place of public assembly**,” thus covering specific, existing locations where people typically already assemble.

The rule is that “when general words in a statute follow the designation of particular things or classes of subjects or persons, the general words will usually be construed to include only those things or persons of the same class or general nature as those specifically mentioned.” *In re Wallace W.*, 333 Md. 186, 190, 634 A.2d 53 (1993), quoting *Giant of Md. v. State’s Attorney*, 274 Md. 158, 167, 334 A.2d 107, 113 (1975). This is simply an application of the canon of *ejusdem generis* which is based on “the supposition that if the legislature had intended the general words to be construed in an unrestricted sense, it would not have enumerated the specific things.” *State v. 158 Gaming Devices*, 304 Md. 404, 429 n. 12, 499 A.2d 940 (1985). See also *State v. Sinclair*, 274 Md. 646, 650, 659, 337 A.2d 703 (1975). As the Supreme Court has also noted, the canon of *ejusdem generis* “limits general terms [that] follow specific ones to matters similar to those specified.” *CSX Transp., Inc. v. Alabama Dept. of Revenue*, 562 U.S. 277, 294 (2011).

Here, by using the term “another place of public assembly,” the statute was obviously intended to include “another” place which is akin or similar to the places expressly mentioned in the same statutory sentence, viz. a “park,” a “church,” a “school” or a “public building.” Privately owned businesses or private property in

general are not like any of these specific places. Read literally, the bill's definition of a "place of public assembly" dramatically expands the area subject to local regulation to include any place within 100 yards of a private business or private property that "may" be used as place of assembly as well as to any place within 100 yards of a park, school, church or a public building. A place of public assembly as defined by this bill could cover a private business or a private home used as a place for a book club to meet, or a private property used to host any sort of event, no matter how small or limited in scope. It intrudes into private homes and businesses in a wholly unprecedented way. That is a vast overreach of legislative power by the County. It will not go unchallenged.

Even if the definition of "another place of public assembly" is limited to private businesses, the term is unbelievably broad. Given the number of private businesses in the County, such application would expand the exception to a huge portion of the County, including literally thousands of private homes within a 100 yards of a business. This sweep into private homes is not saved by Section 57-11, as this bill amends Section 57-11 to directly regulate the mere possession of "a ghost gun or undetectable gun" in the person's own home. The Section 4-209 exception for "another" place of public assembly simply cannot be reasonably read to allow such all-encompassing regulation of private possession in one's own home. This is particularly so given that State law expressly permits home possession of firearms, including handguns. MD Code, Criminal Law, § 4-203(b)(6) (providing that a person may wear, carry or transport a handgun "on real estate that the person owns or leases"). Nothing in Section 4-209 allows the County to regulate home possession of firearms. For these reasons alone, the bill's definition of "public assembly" will not survive judicial review. See *Montgomery County v. Atlantic Guns, Inc.*, 302 Md. 540, 489 A.2d 1114 (1985).

The bill conflicts with State law in other ways. The bill amends Section 57-11 to regulate possession of a firearm and ammunition at a business, providing that such owner may possess a firearm only if the owner "has a permit to carry the firearm." It similarly allows an authorized employee of the business to possess a firearm only if the employee "has a permit to carry the firearm." These amendments (requiring the owner and the employee to have a permit) bring the bill into direct conflict with State law. Specifically, MD Code, Criminal Law, § 4-203(b), expressly provides that a person need not have a permit to transport a handgun between the residence "and the place of business of the person" if the business is owned substantially by that person (Section 4-203(b)(3)), and further provides that a person may, without a permit, wear and carry a handgun "within the confines of a business establishment that the person owns or leases" (Section 4-203(b)(6)). Section 4-203(b)(7) extends the same right to wear and carry a handgun, without a permit, to an authorized supervisory employee within the confines of the business. These State law provisions are also not limited to "one" firearm, much less to ammunition for that one firearm, as required by this bill. These provisions of State law bar the County from regulating possession of firearms by business owners and employees.

Specifically, under the Express Powers Act, counties in Maryland have no power to pass legislation that is inconsistent with State law. See MD Code, Local

Government, §10-206(a) (providing that a county may pass an ordinance, resolution, or bylaw that is “not inconsistent with State law”). Thus, “[a] county may exercise the powers provided under this title only to the extent that the powers are not preempted by or in conflict with public general law.” (Id. at §10-206(b)). It is thus well established that a local law is preempted by conflict when the local law prohibits an activity which is permitted by State law, or permits an activity prohibited by state law. See *City of Baltimore v. Sitnick*, 254 Md. 303, 317, 255 A.2d 376 (1969) (“a political subdivision may not prohibit what the State by general public law has permitted”). The bill obviously fails that test. Nothing in Section 4-209 allows the County to enact regulations that actually and directly ban conduct expressly permitted by State law. This County has already been rebuffed in its attempt to regulate ammunition by the Maryland Court of Appeals. See *Montgomery County v. Atlantic Guns, Inc.*, 302 Md. 540, 489 A.2d 1114 (1985). The limited exception for regulation allowed in Section 4-209 cannot be construed to allow the County to directly contravene State law in this manner. See, e.g., *Allied Vending, Inc. v. City of Bowie*, 332 Md. 279, 297-98, 631 A.2d 77 (1993) (“state law may pre-empt local law in one of three ways: 1) pre-emption by conflict, 2) express pre-emption, or 3) implied pre-emption”).

This bill also seeks to outlaw so called “ghost guns” to the extent possible and in so doing violates existing State law. For example, the bill bans the mere possession or transport of any firearm (including a ghost gun) within 100 yards of a place of public assembly. As noted, the bill expressly amends Section 57-11 to make clear that this ban applies to ghost guns in the home. As explained above, the County may not ban the possession of any firearms in the home as State law expressly permits such possession. MD Code, Public Safety, §4-203(b)(6). That includes ghost gun possessions in the home. The County may not regulate home possession of any firearm. Period. Full stop.

The bill also provides that a person “must not” “sell, transfer, possess, transport, or use a computer code to create, a firearm through a 3D printing process.” That language is a grammatical mess. Does the bill ban the mere sale or possession of such code or does it ban such a sale or possession only when it is used “to create a firearm.” If it bans the former, then the bill is blatantly unconstitutional under the First Amendment and Second Amendment, as discussed below, and preempted, as discussed above. If it bans only the latter, then the bill is nonsense, as it is hard to envision a “transport” or “sale” of code that “creates” a gun. Such poor draftsmanship is intolerable in a bill that would attach penalties for a Class A violation. *Sessions v. Dimaya*, 138 S.Ct. 1204, 1212 (2018) (“the prohibition of vagueness in criminal statutes...is ‘essential’ of due process required by both ‘ordinary notions of fair play and the settled rules of law’”) (citation omitted). See also *Myers v. State*, 248 Md. App. 422, 437, 241 A.3d 997 (2020) (“The United States Supreme Court has stated that ‘a vague law is no law at all.’”), quoting *United States v. Davis*, 139 S. Ct. 2319, 2323 (2019).

The bill also bans “access” by a minor to any “major component” of a ghost gun and defines a major component to include “the slide or cylinder or the frame or receiver” or the barrel in the case of a rifle or shotgun. That limitation is inconsistent with

current State law that regulates access by a minor under the age of 16 to a loaded “firearm,” not merely access to an unloaded component of a firearm. MD Code, Criminal Law, § 4-104. Current State law allows such access to an entire firearm, including a loaded firearm, if the child under the age of 16 has a hunter safety certificate. (Id.). The statute also expressly permits such access if supervised “by an individual at least 18 years old.” (Id.). Once again, the bill improperly prohibits an activity permitted by State law.

Similarly, the bill provides that a person “must not” sell, lend or otherwise transfer a ghost gun to a minor and bans the manufacture or assembly of “a gun” (any gun) in the mere presence of a minor, including in the home, by a parent or firearms instructor or other adult. These bans are directly contrary to State law, which provides that a minor (or any person under 21) may “transfer” and possess a regulated firearm (including a handgun) if that person is under the supervision of a person over 21 or being trained by an instructor. MD Code, Public Safety, § 5-133(d). Such firearms instruction by an adult also frequently includes cleaning firearms, which is a process that necessarily includes disassembly and assembly of a firearm. Yet, this bill would ban these activities expressly permitted by State law. Indeed, Section 4-209(b)(2) flatly prohibits the County from banning firearms training, including the training of minors. That is exactly what this bill does by banning the assembly of any firearm in the mere “presence” of a minor and by banning the use of a ghost gun in the training or supervised access expressly allowed by Section 5-133(d).

The Bill Violates The First Amendment:

The bill amends Section 57-11 to ban the mere possession, transport, sale or transfer of computer software. Yet, there is no doubt that computer “software” or a “computer program” is fully protected by the First Amendment. See, e.g., *Junger v. Daley*, 209 F.3d 481, 482 (6th Cir. 2000) (“Because computer source code is an expressive means for the exchange of information and ideas about computer programming, we hold that it is protected by the First Amendment.”); *Universal City Studios, Inc. v. Corley*, 273 F.3d 429, 449 (2d Cir. 2001) (“[C]omputer code, and computer programs constructed from code can merit First Amendment protection.”). Banning computer programs is thus akin to banning a book and banning distribution of computer code is thus akin to banning the distribution of a book. Legally, if passed, the bill would turn County law enforcement officers into censors and the County government into a bunch of book burners.

The ban imposed by the bill is a purely “content-based” prior restraint on a First Amendment activities. See *Reed v. Town of Gilbert*, 135 S.Ct. 2218 (2015). It is well-established that prior restraints to speech are “the most serious and least tolerable infringement on First Amendment rights.” *Nebraska Press Ass’n v. Stuart*, 427 U.S. 539, 559 (1976). Under *Reed*, a facially content-neutral law will still be categorized as content-based if it “cannot be ‘justified without reference to the content of the regulated speech,’” or ... adopted by the government ‘because of disagreement with the message [the speech] conveys.’” 135 S.Ct. at 2227, quoting *Ward v. Rock Against Racism*, 491 U.S. 781, 791 (1989). Here, there is nothing remotely facially neutral

about the bans imposed by this bill. The bans are based on the County's "disagreement with the message." Such a prior restraint on the message cannot stand. See *Defense Distributed v. Dept. of State*, 838 F.3d 451, 468-70 (5th Cir. 2016), *cert. denied* 138 S.Ct. 638 (2018) (Jones, J. dissenting on other grounds) (reaching the merits of the First Amendment claim not considered by the majority and noting that the government's restriction on the export of 3-D printing code was content-based and thus must be analyzed under strict scrutiny).

Moreover, every American has a First Amendment right to receive information. Although the First Amendment refers only to the right to speak, courts have long recognized that the Amendment also protects the right to receive the speech of others. See *First Nat'l Bank of Boston v. Bellotti*, 435 U.S. 765 (1978) (stating that the "First Amendment ... afford[s] the public access to discussion, debate, and the dissemination of information and ideas"); *Virginia State Bd. of Pharmacy v. Virginia Citizens Consumer Council, Inc.*, 425 U.S. 748 (1976) (ban on advertising of prescription drug prices overturned); *Bigelow v. Virginia*, 421 U.S. 809, (1975) (ban on abortion advertising invalid); *Lamont v. Postmaster General*, 381 U.S. 301, (1965) (a postal regulation limiting the importation of Communist publications overturned); *Martin v. City of Struthers*, 319 U.S. 141 (1943) (ordinance prohibiting door-to-door solicitation invalid as to distribution of leaflets announcing a religious meeting). Every person in Maryland has a constitutional right to receive, purchase or otherwise obtain the very computer software or programs that the bill would ban.

The Bill Is Unconstitutional Under The Second Amendment:

As noted, the bill would ban mere possession of a "ghost gun" within 100 yards of broad and vague definition of a place of public assembly, including banning possession in the home. This bill is thus a gun ban, pure and simple. Such a gun ban violates the Second Amendment right of owners to possess firearms under *District of Columbia v. Heller*, 554 U.S. 570 (2008), and *McDonald v. Chicago*, 561 U.S. 742, 750 (2010). Even under the least demanding test ("intermediate scrutiny"), if the State can accomplish its legitimate objectives without a ban (a naked desire to penalize gun owners is not legitimate), then the State must use that alternative. *McCullen v. Coakley*, 134 S. Ct. 2518, 2534 (2014). Stated differently, under intermediate scrutiny, the State has the burden to demonstrate that its law does not "burden substantially more [protected conduct] than is necessary to further the government's legitimate interest." *Id.* at 2535, quoting *Ward v. Rock Against Racism*, 491 U.S. 781, 796 (1989). See also *NY State Rifle & Pistol Ass'n. v. Cuomo*, 804 F.3d 242, 264 (2d Cir. 2015), *cert. denied*, 136 S.Ct. 2486 (2016) (striking down a 7 round load limit in a firearm magazine because the limit was "untethered from the stated rationale"). See also *Reynolds v. Middleton*, 779 F.3d 222, 232 (4th Cir. 2015) (holding that, under the intermediate scrutiny test as construed in *McCullen*, the government must "prove that it actually tried other methods to address the problem"). (Emphasis in original).

The test for "strict scrutiny" is even more demanding as, under that test, the State must prove both a "compelling need" and that it used the "least" restrictive alternative in addressing that need. See *United States v. Playboy Entm't. Grp., Inc.*,

529 U.S. 803, 813 (2000). More generally, the constitutionality of gun laws must be analyzed under the “text, history and tradition” test that was actually used in *Heller* and *McDonald*. See, e.g., *Heller v. District of Columbia*, 670 F.3d 1244, 1269 (D.C. Cir. 2016) (Kavanaugh, J., dissenting) (“In my view, *Heller* and *McDonald* leave little doubt that courts are to assess gun bans and regulations based on text, history, and tradition, not by a balancing test such as strict or intermediate scrutiny.”). There is no “text, history or tradition” that could possibly support the types of bans imposed by this bill.

The manufacture of a homemade firearm or the use of a 3-D printer to create a homemade gun or gun component does not make that gun illegal in the slightest under long-standing federal law and state law. Under federal law, a person may legally manufacture a firearm for his own personal use. See 18 U.S.C. § 922(a). However, “it is illegal to transfer such weapons in any way.” *Defense Distributed v. United States*, 838 F.3d 451, 454 (5th Cir. 2016). This manufacture “involves starting with an ‘80% lower receiver,’ which is simply an unfinished piece of metal that looks quite a bit like a lower receiver but is not legally considered one and may therefore be bought and sold freely. It requires additional milling and other work to turn into a functional lower receiver.” (Id).

Manufacturing an “80% lower” into a “functional lower receiver” is not a trivial process. It takes machine tools, expertise and hours of time. Miscues are common and, when made, essentially convert the “80% lower” into scrap metal. Individuals who undertake this process are overwhelmingly hobbyists, not criminals. Even after the receiver is successfully made, the owner would still have to purchase the additional parts, such as a barrel, the trigger, slide and all the internal parts to complete the assembly. All these additional parts are expensive. With the cost of the tools to mill the receiver, plus the cost of the parts, a final assembled homemade gun costs more to make than it would to actually buy an identical gun from a dealer. This bill would ban the hobby and penalize the hobbyist for the continued possession of any gun (within a 100 yards of a place of public assembly) that the hobbyist constructed prior to the enactment of the law. That result likely includes literally thousands of law-abiding people in Montgomery County.

Banning manufacture or the mere possession of any gun made by a 3-D printer, cannot be justified under any of these tests applicable to the Second Amendment. The bills’ ban on the use of computers is akin to the argument that the Second Amendment protects only muskets that were used during the Revolutionary War, a contention that the Court in *Heller* rejected as “bordering on the frivolous.” *Heller*, 554 U.S. at 582. Indeed, almost all firearms are manufactured using computer software. The County simply may not ban the possession of these types of arms. See *Defense Distributed v. Dept. of State*, 121 F.Supp.3d 680, 699 (W.D. Tex. 2015), *aff’d*, 838 F.3d 451 (5th Cir. 2016), *cert. denied*, 138 S.Ct. 638 (2018) (sustaining a regulation of 3-D printed guns under the Second Amendment because plaintiffs were “not prohibited from manufacturing their own firearms” and were “not prohibited from acquiring the computer files at issue”).

Heller held that guns in “common use” by law abiding persons are prima facie protected arms under the Second Amendment. *Heller*, 554 U.S. at 627. Homemade guns easily satisfy this requirement as there are literally tens of thousands of such guns made over many years throughout the United States. Guns for personal use have been made at home for centuries, even before the Revolutionary War. The Council simply may not disregard that reality. See *Caetano v. Massachusetts*, 136 S.Ct.1027 (2016) (summarily reversing Massachusetts’ highest court for failing to follow the reasoning of *Heller* in sustaining a state ban on stun guns); *Ramirez v. Commonwealth*, 479 Mass. 331, 332, 352 (2017) (on remand from *Caetano*, holding that “the absolute prohibition against civilian possession of stun guns under § 131J is in violation of the Second Amendment” and declaring the State’s absolute ban to be “facially invalid”). Homemade guns are at least as much “in common use” as stun guns at issue in *Caetano*.

Here, the supposed evil that this bill purports to address is guns without serial numbers because such guns are not “traceable.” Yet, tracing runs out after identification of the gun’s first purchaser and firearms may be sold and resold many times in their lifetime. Criminals, who may not possess firearms at all, will not be deterred by the bill as possession of a firearm by a prohibited person is already a 10-year federal felony, 18 U.S.C. § 922(g), and a serious crime under existing State law, MD Code, Public Safety, § 5-101(g)(3), § 5-133(b)(1), § 5-205(b)(1). The few crimes that are solved by tracing guns left at a crime scene are only a small fraction of guns used in crimes because very few guns are actually traced by the ATF. See David B. Kopel, *Clueless: The Misuse of BATF Firearms Tracing Data*, <http://www.davekopel.org/2A/LawRev/CluelessBATFtracing.htm>. See also Police Departments Fail to Regularly Trace Crime Guns, <https://www.thetrace.org/2018/12/police-departments-gun-trace-atf/>. The ATF itself has cautioned against any use of trace data, noting that “[t]he firearms selected [for tracing] do not constitute a random sample and should not be considered representative of the larger universe of all firearms used by criminals, or any subset of that universe.” Bureau of Alcohol, Tobacco, Firearms and Explosives, *Firearms Trace Data*, 2016: Maryland, <https://www.atf.gov/docs/163521-mdatfwebsite15pdf/download>. As the ATF further notes, “[n]ot all firearms used in crime are traced and not all firearms traced are used in crime,” stating further that “[f]irearms are normally traced to the first retail seller, and sources reported for firearms traced do not necessarily represent the sources or methods by which firearms in general are acquired for use in crime.”

But, if the concern is truly that these guns lack a serial number (rather than a desire to penalize gun owners), then that concern can be addressed without banning homemade guns. Specifically, there are alternatives to bans. For example, a new law passed in California (which is ranked by the Giffords Law Center as having the most restrictive gun laws in the nation) provides that a new resident to the state shall apply to the Department of Justice for a unique serial number within 60 days of arrival for any firearm the resident wishes to possess in the state that the resident previously self-manufactured or self-assembled or a firearm the resident owns, that does not have a unique serial number or other mark of identification. As of July 1, 2018, prior to manufacturing or assembling a new firearm, a person is

required to apply to California for a unique serial number. The gun owner is then simply required to engrave that number onto the receiver and report back to California that he or she has done so. As of January 1, 2019, owners of existing guns were required to apply for such serial numbers and perform this engraving. See California Penal Code §§ 29180-29184.

In short, assembly of new homemade guns and existing possession is permitted as long as this serial number is obtained, engraved and reported. California Penal Code §29180. In this way, the owner is identified and the gun is fully “traceable” and thus no longer a so-called “ghost gun.” As this law indicates, there is no reason to take the extreme step of flatly banning homemade guns or converting existing owners into criminals. Under *Heller*, the County may not simply reject this alternative simply because a general ban is more convenient or cheaper. Gun owners may not be penalized for such flimsy reasons. See, e.g., *Board of Estimate of City of New York v. Morris*, 489 U.S. 688, 702 n.10 (1989); *Heller v. District of Columbia*, 801 F.3d 264, 310 (D.C. Cir. 2015) (Henderson, J., concurring in part and dissenting in part). Indeed, in 2018, the House Judiciary Committee in the General Assembly favorably reported a bill (HB 740) that expressly required the State Police to conduct a study of this California alternative. Such legislation may be enacted in the future. The Council has no role in such State-wide matters.

In sum, the Council should not venture out on this ill-conceived regulatory adventure that will, more likely than not, be struck down as preempted or otherwise invalidated by the courts. Waiting for the State to act also makes fiscal sense. If the State General Assembly decides to regulate “ghost guns,” then the substantial litigation costs associated with defending that policy will be borne by the State, not by the County. Such legislation, if enacted by the General Assembly, will also undoubtedly conflict in some way with the bans that would be imposed by this bill, thereby resulting in the preemption of the County law. The Council should await action by the General Assembly. “Feel good” legislation is no substitute for sound legal judgment.

Sincerely,



Mark W. Pennak
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mpennak@marylandshallissue.org

IN THE CIRCUIT COURT FOR MONTGOMERY COUNTY, MARYLAND

MARYLAND SHALL ISSUE, INC.
9613 Harford Rd., Ste C #1015
Baltimore, Maryland 21234-2150

ENGAGE ARMAMENT LLC
701 E. Gude Dr., Ste 101,
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ANDREW RAYMOND
14819 Poplar Hill Rd
Darnestown MD 20874

Case No.: 485899V

CARLOS RABANALES
7727 Green Valley Rd,
Frederick, Maryland 21701

JURY DEMANDED

BRANDON FERRELL
40 Mountain Laurel Court
Gaithersburg, Maryland 20879

DERYCK WEAVER
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RONALD DAVID
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Gaithersburg, Maryland 20882

NANCY DAVID
24129 Pecan Grove Lane
Gaithersburg, Maryland 20882

Plaintiffs,

v.

**MONTGOMERY COUNTY,
MARYLAND
101 Monroe Street
Rockville, Maryland 20850**

Defendant.

SERVE:

~~Marc P. Hansen, Esq.~~

~~County Attorney,~~

~~Montgomery County, MD~~

~~101 Monroe Street, 3rd floor~~

~~Rockville, Maryland 20850~~

Service Agent for

Defendant.

FIRST AMENDED

**VERIFIED COMPLAINT FOR DECLARATORY AND EQUITABLE RELIEF
AND FOR COMPENSATORY DAMAGES, NOMINAL DAMAGES, ~~PUNITIVE~~
DAMAGES AND ATTORNEY'S FEES AND COSTS**

COME NOW, the Plaintiffs, through counsel, and sue the Defendant, and for cause state as follows:

INTRODUCTION

1. On April 16, 2021, the Defendant, Montgomery County, Maryland ("the County") signed into law Bill 4-21, a copy of which is attached to this complaint as Exhibit A. Bill 4-21 becomes effective on July 16, 2021. Through the enactment of County ordinance 4-21, the County has unlawfully exceeded its powers and jurisdiction to criminally regulate the possession and transfer of lawfully owned firearms in a way that is in direct conflict with Article XI-EA, § 3 and Article XI-A.

§ 6 of the Maryland Constitution and in a manner that is inconsistent with multiple existing Maryland statutes. The restrictions enacted by Bill 4-21 violate the Maryland Takings Clause, Article III § 40 and the Due Process Clause of Article 24 of the Maryland Declaration of Rights by depriving plaintiffs of their vested property rights in the personal property regulated by Bill 4-21. ~~The ban on the mere possession or dissemination of computer code imposed by Bill 4-21 violates the First Amendment to the United States Constitution. The hopelessly vague language adopted by Bill 4-21 violates~~ The hopelessly vague provisions violate the Due Process Clause of the Fourteenth Amendment and the Due Process Clause of Article 24 of the Maryland Declaration of Rights. Maryland County Code § 57-11, as amended by Bill 4-21 violates the Second Amendment to the Constitution in so far as it purports to regulate or ban the sale, transfer, possession or transport of any firearm or any ammunition with 100 yards of a place of public assembly as that term is defined by Bill 4-21. To the extent that Maryland Code, Criminal Law § 4-209(b) purports to authorize the regulations imposed by Bill 4-21, it is likewise unconstitutional under the Second Amendment. Pursuant to 42 U.S.C. § 1983, Plaintiffs seek declaratory and injunctive relief and compensatory damages, including nominal damages, for the violations of their Federal constitutional rights vague language adopted by Bill 4-21, as alleged below. Plaintiffs further seek an award of attorneys' fees under 42 U.S.C. § 1988, in an amount to be determined, for the violations of their Federal constitutional rights, as alleged below. Plaintiffs seek declaratory and injunctive relief on their State Constitutional and statutory law claims.

JURISDICTION AND VENUE

2. This Court has jurisdiction over this matter pursuant to MD Code, Courts and Judicial Proceedings, § 1-501, and MD Code, Courts and Judicial Proceedings, § 3-403, as this complaint seeks prospective declaratory and injunctive relief damages, attorneys' fees pursuant to 42 U.S.C. § 1988, and other relief afforded by 42 U.S.C. § 1983. This complaint raises both state law claims as

well as claims arising under the United States Constitution. This declaratory judgment action is brought pursuant to MD Code, Courts and Judicial Proceedings § 3-406, and MD Code, Courts and Judicial Proceedings, § 3-409, for the purpose of determining questions of actual controversy between the parties and terminating uncertainty and controversy giving rise to this proceeding. Plaintiffs request a speedy hearing of this action in accordance with MD Code, Courts and Judicial Proceedings, § 3-409(e).

3. Venue is properly in this Court in this matter pursuant to MD Code, Courts and Judicial Proceedings, § 6-201, as the defendant resides, carries on a regular business and maintains its principal offices in Montgomery County, Maryland. Montgomery County is named as a defendant and is a necessary party to this action under MD Code, Courts and Judicial Proceedings, § 3-405(b).

MONTGOMERY COUNTY BILL 4-21

4. In relevant part, Bill 4-21 amends several sections of Chapter 57 of the Montgomery County Code (“County Code”). Specifically, Bill 4-21 amends Section 57-1, to broaden the definition of a “gun or firearm” to include “**a ghost gun**” and, in addition, to provide the following new definitions (additions enacted by Bill 4-21 are **bolded**, portions of existing law that are deleted by Bill 4-21 are in *brackets and italics*):

a. A “**3D printing process**” is defined as “**a process of making a three-dimensional, solid object using a computer code or program, including any process in which material is joined or solidified under computer control to create a three-dimensional object;**”

b. A “**ghost gun**” is defined as “**a firearm, including an unfinished frame or receiver, that lacks a unique serial number engraved or cased in metal alloy on the frame or receiver by a licensed manufacturer, maker or importer under federal law or markings in accordance with 27 C.F.R. § 479.102. It does not include a firearm that has been rendered permanently**

1 inoperable, or a firearm that is not required to have a serial number in accordance with the
2 Federal Gun Control Act of 1968;”

3 c. The term “Undetectable gun” is defined as:

4 (A) a firearm that, after the removal of all its parts other than a major component, is not
5 detectable by walk-through metal detectors commonly used at airports or other public
6 buildings;

7 (B) a major component that, if subjected to inspection by the types of detection devices
8 commonly used at airports or other public buildings for security screening, would not generate
9 an image that accurately depicts the shape of the component; or
10

11 C) a firearm manufactured wholly of plastic, fiberglass, or through a 3D printing process.
12

13 d. A “Major component” is defined as “with respect to a firearm: (1) the slide or cylinder
14 or the frame or receiver; and (2) in the case of a rifle or shotgun, the barrel;”
15

16 e. A “Place of public assembly” is defined as a place where the public may assemble,
17 whether the place is publicly or privately owned, including a [government owned] park [identified
18 by the Maryland-National Capital Park and Planning Commission]; place of worship; [elementary
19 or secondary] school; [public] library; [government-owned or -operated] recreational facility;
20 hospital; community health center; long-term facility; or multipurpose exhibition facility, such as
21 a fairgrounds or conference center. A place of public assembly includes all property associated with
22 the place, such as a parking lot or grounds of a building.
23

24 5. Bill 4-21 amends Section 57-7 of the County Code to provide (new additions in bold):

25 (c) A person must not give, sell, rent, lend, or otherwise transfer to a minor:

26 (1) a ghost gun or major component of a ghost gun;

27 (2) an undetectable gun or major component of an undetectable gun;
28

1 or

2 (3) a computer code or program to make a gun through a 3D printing
3 process.

4
5 (d) A person must not purchase, sell, transfer, possess, or transfer a ghost gun, including
6 a gun through a 3D printing process, in the presence of a minor.

7 (e) A person must not store or leave a ghost gun, an undetectable gun, or a
8 major component of a ghost gun or an undetectable gun, in a location
9 that the person knows or should know is accessible to a minor.

10
11 6. Bill 4-21 also amends 57-11 of the County Code to provide (new provisions added by
12 Bill 4-21 are in **bold**, portions deleted by Bill 4-21 are in *brackets* and *italics*):

13 (a) [A] **In or within 100 yards of a place of public assembly, a person must not:**

14 (1) sell, transfer, possess, or transport **a ghost gun, undetectable gun, handgun, rifle,**
15 or shotgun, or ammunition **or major component** for these firearms[, *in or within 100*
16 *yards of a place of public assembly*]; **or**

17
18 (2) **sell, transfer, possess, transport a firearm created through a 3D printing**
19 **process.**

20 (b) This section does not:

21 * * * *,

22
23 (3) apply to the possession of a firearm or ammunition, **other than a**
24 **ghost gun or an undetectable gun**, in the person's own home;

25 (4) apply to the possession of one firearm, and ammunition for the
26 firearm, at a business by either the owner **who has a permit to**
27 **carry the firearm**, or one authorized employee of the business
28

1 **who has a permit to carry the firearm;**

2 (5) apply to the possession of a handgun by a person who has
3 received a permit to carry the handgun under State law; or
4 (A) transported in an enclosed case or in a locked firearms rack
5 on a motor vehicle, **unless the firearm is a ghost gun or an**
6 **undetectable gun; or**

7
8 * * * *

9 7. Bill 4-21 leaves unaltered the penalties for a violation of Chapter 57 of the County
10 Code. Under Section 57-15 of the County Code, with an exception for violations of Section 5-8 not
11 applicable here: “Any violation of this Chapter or a condition of an approval certificate issued under
12 this Chapter is a Class A violation to which the maximum penalties for a Class A violation apply.”
13 Under Section 1-19 of the County Code, the maximum penalties applicable for a violation of the
14 offenses created by Bill 4-21 are criminal penalties of a \$1,000 fine and 6 months in jail. Under
15 Section 1-20(c) of the County Code, “[e]ach day any violation of County law continues is a separate
16 offense.”
17
18

19 **STATE AND FEDERAL FIREARMS LAW**

20 8. Under Federal law, a person may legally manufacture a firearm for his own personal
21 use. See 18 U.S.C. § 922(a). See *Defense Distributed v. Department of State*, 838 F.3d 451 (5th Cir.
22 2016). Under Maryland law, a person is likewise permitted to manufacture a firearm for her own
23 personal use. Firearms manufactured for personal use are not required to be serialized or engraved
24 with a serial number under Federal law or Maryland law.
25

26 9. Under Federal law, 18 U.S.C. § 921(a)(3), “[t]he term “firearm” means (A) any
27 weapon (including a starter gun) which will or is designed to or may readily be converted to expel a
28

1 projectile by the action of an explosive; (B) the frame or receiver of any such weapon; (C) any firearm
2 muffler or firearm silencer; or (D) any destructive device. Such term does not include an antique
3 firearm.”

4
5 10. Similarly, under Maryland law, MD Code, Public Safety, § 5-101(h)(1), a “firearm”
6 is defined as “(i) a weapon that expels, is designed to expel, or may readily be converted to expel a
7 projectile by the action of an explosive; or (ii) the frame or receiver of such a weapon.” Maryland law
8 does not define “frame or receiver.” Maryland law does not define or regulate the possession, sale or
9 transfer of “major components” for firearms. Fully finished receivers are commonly sold with serial
10 numbers already engraved in compliance with Federal law and such fully finished receivers may be
11 lawfully assembled by law-abiding persons for personal use by obtaining other components that
12 lawfully available and sold throughout the United States.

14 11. Since 1968, the Federal Bureau of Alcohol, Tobacco and Firearms (“ATF”) has
15 defined a “receiver” as “[t]hat part of a firearm which provides housing for the hammer, bolt or
16 breechblock, and firing mechanism, and which is usually threaded at its forward portion to receive
17 the barrel.” See 27 C.F.R. § 478.11; 33 Fed. Reg. 18558 (1968). Under ATF Guidance, an unfinished
18 receiver that has not yet had “machining of any kind performed in the area of the trigger/hammer
19 (fire-control) recess (or cavity),” is not considered to be a receiver and is thus not considered to be a
20 firearm. ATF Firearms Technology Branch Technical Bulletin 14-01. Such firearms are sometimes
21 informally called “80% receivers,” depending on the extent to which milling has already occurred.
22 While Bill 4-21 purports to regulate “major components” of firearms and defines major components
23 to mean “(1) the slide or cylinder or the frame or receiver; and (2) in the case of a rifle or shotgun, the
24 barrel,” Bill 4-21 does not attempt to define “frame or receiver.” Federal law does not require the
25 manufacturer place any serial number on the slide or cylinder, or barrel, but rather requires that “an
26
27
28

individual serial number” be placed on the “frame or receiver.” 27 C.F.R. § 478.92(a)(1)(i). See also 27 C.F.R. § 479.102. Maryland law does not regulate the placement of serial numbers. A receiver that has been serialized by a federally regulated firearms manufacturer is treated as a “firearm” under Federal law and is thus subject to the ~~fully~~full panoply of Federal regulation, including the performance of a background check otherwise required by Federal law. These definitions were modified and updated by ATF regulations published on April 26, 2022. See Definition of “Frame or Receiver” and Identification of Firearms, 87 Fed. Reg. 24651 (April 26, 2022).

912. Persons otherwise prohibited from owning firearms are still legally barred from the manufacture, transfer, or possession of modern firearms or modern ammunition, regardless of the method of manufacture. Such possession, actual or constructive, is a violation of 18 U.S.C. § 922(g), which is punishable by up to 10 years imprisonment under Federal law. See 18 U.S.C. § 924(a)(2). Possession of a firearm by a prohibited person is likewise a serious crime under Maryland law. See MD Code, Public Safety, § 5-101(g)(3), § 5-133(b)(1), § 5-205(b)(1).

1013. Under current Federal law, it is unlawful to “manufacture, import, sell, ship, deliver, possess, transfer, or receive” any firearm that is not “detectable” by a “Security Exemplar” or any “major component” of which does not show up accurately on airport x-ray machines. 18 U.S.C. § 922(p). A knowing violation of that prohibition is a Federal felony, punishable by five years of imprisonment and a fine. See 18 U.S.C. § 924(f). For these purposes, Federal law provides that “the term “Security Exemplar” means an object, to be fabricated at the direction of the Attorney General, that is-- (i) constructed of, during the 12-month period beginning on the date of the enactment of this subsection, 3.7 ounces of material type 17-4 PH stainless steel in a shape resembling a handgun; and (ii) suitable for testing and calibrating metal detectors.” 18 U.S.C. § 922(p)(2)(C).

1414. Law-abiding Americans, including hobbyists, have lawfully manufactured firearms for personal use since before the Revolutionary War and that practice continues up to the present day. While there is no definitive count of such personal-use firearms, the total number of such firearms manufactured for personal use is undoubtedly in the hundreds of thousands and are in common use within the United States and Maryland. Such firearms manufactured for personal use include rifles and pistols and all such firearms successfully manufactured for personal use may be used for legitimate lawful purposes, including self-defense in the home. The Second Amendment to the United States Constitution guarantees a right to use firearms “for the core lawful purpose of self-defense.” *District of Columbia v. Heller*, 554 U.S. 570, 630 (2008). The Second Amendment protects arms that are “typically possessed by law-abiding citizens for lawful purposes.” (Id. at 625).

1415. Under MD Code, Criminal Law, § 4-203(b)(3), Maryland law expressly permits a person to transport a handgun “on the person or in a vehicle while the person is transporting the handgun to or from the place of legal purchase or sale, or to or from a bona fide repair shop, or between bona fide residences of the person, or between the bona fide residence and place of business of the person, if the business is operated and owned substantially by the person if each handgun is unloaded and carried in an enclosed case or an enclosed holster.” Such transport and carriage of long guns, such as rifles and shotguns, are permitted under Maryland law without restriction.

1416. Under MD Code, Criminal Law, § 4-203(b)(5), Maryland law expressly permits “the moving by a bona fide gun collector of part or all of the collector’s gun collection from place to place for public or private exhibition if each handgun is unloaded and carried in an enclosed case or an enclosed holster.” Such transport and carriage of long guns, such as rifles and shotguns, are permitted under Maryland law without restriction.

1 ~~44~~17. Under MD Code, Criminal Law, § 4-203(b)(6), Maryland law expressly permits “the
2 wearing, carrying, or transporting of a handgun by a person on real estate that the person owns or
3 leases or where the person resides or within the confines of a business establishment that the person
4 owns or leases.” Such persons are not required to possess or obtain a Maryland carry permit under
5 MD Code, Public Safety, § 5-306. There is no limitation on the number of handguns or types of
6 ammunition that may be possessed, worn, carried or transported under this provision of Section 4-
7 203(b)(6). Such transport, wear and carriage of rifles and shotguns in a person’s residence or business
8 are permitted under Maryland law without restriction.
9

10
11 ~~45~~18. Under MD Code, Criminal Law, § 4-203(b)(7), Maryland law expressly permits “the
12 wearing, carrying, or transporting of a handgun by a supervisory employee: (i) in the course of
13 employment; (ii) within the confines of the business establishment in which the supervisory employee
14 is employed; and (iii) when so authorized by the owner or manager of the business establishment.”
15 Such persons are not required to possess or obtain a Maryland carry permit under MD Code, Public
16 Safety, § 5-306. There is no limitation on the number of handguns or ammunition that may be
17 possessed, worn, carried or transported under this provision of Section 4-203(b)(7). There is no
18 limitation on the number of supervisory employees whom the employer may authorize to carry a
19 firearm under this section. Such transport, wear and carriage of rifles and shotguns by business
20 employees are permitted under Maryland law without restriction.
21

22
23 ~~46~~19. Under MD Code, Public Safety, § 5-133(d)(2)(i), a person under the age of 21 may
24 temporarily transfer and possess a regulated firearm, including a handgun, if the person is “1. under
25 the supervision of another who is at least 21 years old and who is not prohibited by State or Federal
26 law from possessing a firearm; and 2. acting with the permission of the parent or legal guardian of the
27 transferee or person in possession.” Under MD Code, Public Safety, § 5-133(d)(2)(iv), a person under
28

1 the age of 21 may temporarily transfer or possess a regulated firearm, including a handgun, if the
2 person is “1. participating in marksmanship training of a recognized organization; and 2. under the
3 supervision of a qualified instructor.”

4
5 ~~17-20.~~ MD Code, Criminal Law, § 4-104, expressly permits a minor child under the age of
6 16 to have access to any firearm if that access “is supervised by an individual at least 18 years old” or
7 if the minor child under the age of 16 has a certificate of firearm and hunter safety issued under § 10-
8 301.1 of the Natural Resources Article. By necessary implication, access to a firearm by a minor child
9 between the ages of 16 and 18 is permitted by Section 4-104 without restriction.

10
11 ~~1821.~~ The regulation of unserialized firearms is a matter of significant state-wide and
12 national interest. In the 2021 General Assembly, ghost guns were addressed in three bills. Two bills,
13 House Bill 638 and Senate Bill 624, would have imposed extensive regulation on the possession and
14 transfer of ghost guns, but would have also afforded a path for existing owners to retain possession
15 of their existing, unserialized firearms that they had lawfully manufactured for personal use. One bill,
16 House Bill 1291, would have banned unserialized firearms manufactured for personal use completely.
17 Similar legislation was proposed in the 2020 General Assembly session, with House Bill 910 and
18 Senate Bill 958, and in the 2019 General Assembly session, with House Bill 740 and Senate Bill 882.
19 House Bill 740 passed the House of Delegates in 2019, and it instructed the Maryland State Police to
20 “develop a plan for a system in the State for the registration of firearms not imprinted with a serial
21 number issued by a federally licensed firearms manufacturer or importer and submit a report
22 describing the system” In the 2021 Session, provisions of House Bill 638 were incorporated into
23 other legislation that had passed the Senate (Senate Bill 190), and that bill, as amended, passed the
24 House Judiciary Committee and was reported to the floor of the House of Delegates, where it was
25 further amended. That bill ultimately did not pass the House.

19-22. On May 7, 2021, the Attorney General announced that the Department of Justice, the Bureau of Alcohol, Tobacco and Firearms, would engage in new rule-making proceedings for the purpose of regulating the manufacture and transfer of “ghost guns.” See Press Release, Justice Department Proposes New Regulation to Update Firearm Definitions Proposed Rule Seeks to Close “Ghost Gun” Loophole (available at <https://bit.ly/3wceMr3>). These proposed regulations have been published in the Federal Register. 86 Fed. Reg. 27720-1001, 2021 WL 2012830 (May 21, 2021). The proposed regulations would regulate manufacturers and dealers but would not limit or regulate the possession of unserialized firearms lawfully built by individuals for their own personal use. These proposed regulations do not limit or regulate the sale or possession of receivers that are otherwise serialized in accordance with existing Federal law.

13 MARYLAND CONSTITUTIONAL AND STATUTORY PREEMPTION PROVISIONS

14 2023. Maryland law contains several preemption statutes that broadly preempt local
15 jurisdictions from regulating firearms:

16 a. MD Code, Public Safety, § 5-104, provides that “[t]his subtitle supersedes any
17 restriction that a local jurisdiction in the State imposes on a sale of a regulated firearm, and the State
18 preempts the right of any local jurisdiction to regulate the sale of a regulated firearm.”

19 b. MD Code, Public Safety, § 5-133(a), provides that “[t]his section supersedes any
20 restriction that a local jurisdiction in the State imposes on the possession by a private party of a
21 regulated firearm, and the State preempts the right of any local jurisdiction to regulate the possession
22 of a regulated firearm.”

23 c. MD Code, Public Safety, § 5-134(a), provides that “[t]his section supersedes any
24 restriction that a local jurisdiction in the State imposes on the transfer by a private party of a regulated
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1 firearm, and the State preempts the right of any local jurisdiction to regulate the transfer of a regulated
2 firearm.”

3 ed. MD Code, Public Safety, § 5-207(a), enacted into law in 2021 as part of House
4 Bill 4, provides that “[t]his section supersedes any restriction that a local jurisdiction in the State
5 imposes on the transfer by a private party of a rifle or shotgun, and the State preempts the right of any
6 local jurisdiction to regulate the transfer of a rifle or shotgun.”

7
8 de. MD Code, Criminal Law, § 4-209, provides:

9 (a) Except as otherwise provided in this section, the State preempts the right of a county,
10 municipal corporation, or special taxing district to regulate the purchase, sale, taxation,
11 transfer, manufacture, repair, ownership, possession, and transportation of:

- 12 (1) a handgun, rifle, or shotgun; and
13 (2) ammunition for and components of a handgun, rifle, or shotgun.

14 Exceptions

15 (b)(1) A county, municipal corporation, or special taxing district may regulate the purchase,
16 sale, transfer, ownership, possession, and transportation of the items listed in subsection (a)
of this section:

- 17 (i) with respect to minors;
18 (ii) with respect to law enforcement officials of the subdivision; and
19 (iii) except as provided in paragraph (2) of this subsection, within 100 yards of or in a park,
church, school, public building, and other place of public assembly.

20 (2) A county, municipal corporation, or special taxing district may not prohibit the teaching
21 of or training in firearms safety, or other educational or sporting use of the items listed in
22 subsection (a) of this section.

23 For purposes of these preemption provisions, a “regulated firearm” includes any handgun. MD Code,
24 Public Safety, § 5-101(r)(1). For purposes of these preemption provisions, the terms “handgun,”
25 “rifle,” and “shotgun” are defined in MD Code, Criminal Law, § 4-201.

26 ~~21-24.~~ Section 6 of Chapter 13, of the 1972 Sessions Laws of Maryland provides: “That all
27 restrictions imposed by the law, ordinances, or regulations of the political subdivisions on the wearing,
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1 carrying, or transporting of handguns are superseded by this Act, and the State of Maryland hereby
 2 preempts the right of the political subdivisions to regulate said matters.” <https://bit.ly/2SvsRkJ>. This
 3 provision has been held to preclude the County from regulating the sale of ammunition in the County.
 4 See *Montgomery County v. Atlantic Guns, Inc.*, 302 Md. 540, 489 A.2d 1114 (1985).
 5

6 ~~2225.~~ Montgomery County has chartered home rule under Section 3 of Article XI-A of the
 7 Maryland Constitution and, under that provision, the County is empowered to enact “local laws.”
 8 ~~Section 4 of Article XI A of~~ Such local laws are “subject to the Maryland Constitution states that
 9 “[a]ny law so drawn as to apply to two or more of the geographical subdivisions and Public General
 10 Laws of this State shall not be deemed a Local Law, within the meaning of this Act.” (Id.). Article
 11 ~~XI-EA, § 6, of the Maryland Constitution provides that “[a]ll charter provisions, or amendments~~
 12 ~~thereto, adopted under the provisions of~~ further that “this Article shall not be construed to authorize
 13 ~~the exercise of any powers in excess of those conferred by the Legislature upon said Counties or City~~
 14 ~~as this Article, shall be subject to all applicable laws enacted by the General Assembly sets forth.”~~
 15 Under these provisions, Montgomery County is not empowered to enact “general laws.” Under
 16 Maryland law, a general law “deals with the general public welfare, a subject which is of significant
 17 interest not just to any one county, but rather to more than one geographical subdivision, or even to
 18 the entire state.” *Steimel v. Board*, 278 Md. 1, 5, 357 A.2d 386, 388 (1976). Thus, “some statutes,
 19 local in form, have been held to be general laws, since they affect the interest of the whole state.” *Cole*
 20 *v. Secretary of State*, 249 Md. 425, 434, 240 A.2d 272, 278 (1968). Similarly, “[a] law may be local
 21 in the sense that it operates only within a limited area, but general in so far as it affects the rights of
 22 persons without the area to carry on a business or to do the work incident to a trade, profession, or
 23 other calling within the area.” *Dasch v. Jackson*, 170 Md. 251, 261, 183 A. 534, 538 (1936).
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1 ~~232~~26. Under the Maryland Express Powers Act, MD Code, Local Government, § 10-202(a),
2 a “[a] county may enact local laws and may repeal or amend any local law enacted by the General
3 Assembly on any matter covered by the express powers in this title.” However, MD Code, Local
4 Government, §10-206(a), provides that a county may pass an ordinance, resolution, or bylaw only if
5 such laws are “not inconsistent with State law.” Similarly, MD Code, Local Government, §10-206(b),
6 provides that “[a] county may exercise the powers provided under this title only to the extent that the
7 powers are not preempted by or in conflict with public general law.” Under binding precedent, a local
8 law is inconsistent with State law when the local law prohibits an activity which is permitted by State
9 law, or permits an activity prohibited by state law. See *City of Baltimore v. Sitnick*, 254 Md. 303, 317,
10 255 A.2d 376, 382 (1969) (“a political subdivision may not prohibit what the State by general public
11 law has permitted”).
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PARTIES

Plaintiffs:

2427. Plaintiff Maryland Shall Issue, Inc. (“MSI”) is a Maryland corporation, located at 9613 Harford Rd., Ste C #1015, Baltimore, MD 21234-2150. MSI is an Internal Revenue Service certified Section 501(c)(4), non-profit membership organization with approximately 2000 members statewide. MSI is an all-volunteer, non-partisan organization dedicated to the preservation and advancement of gun owners’ rights in Maryland. It seeks to educate the community about the right of self-protection, the safe handling of firearms, and the responsibility that goes with carrying a firearm in public. The purposes of MSI include promoting the exercise of the right to keep and bear arms; and education, research, and legal action focusing on the constitutional right to privately own, possess and carry firearms. MSI has one or more members who live and/or work in Montgomery County, and who possess “ghost guns” in their homes and/or in their businesses and engage in other conduct regulated by Bill 4-21. MSI has one or more members who live outside of Montgomery County, but who travel to and/or work within Montgomery County. MSI has one or more members who lives in Montgomery County, but who do not have a Maryland carry permit. MSI has one or more members who travels in or through Montgomery County, but who do not have a Maryland carry permit. Each of the individual plaintiffs identified below are members of MSI. Among the membership of MSI are “qualified instructors” who engage in firearms training, including firearms instruction of minors.

2528. MSI filed extensive comments with Montgomery County, objecting to Bill 4-21 prior to its enactment. A true and correct copy of those comments are attached to this Complaint as Exhibit B. These comments were ignored by the County in enacting Bill 4-21 and omitted as part of the legislative packet made public by the County. As a participant in this process, MSI has a specialized interest in the subject matter addressed by Bill 4-21. The Bill, as enacted, burdens the ability of MSI

1 members to keep and bear arms within Montgomery County, including firearms that are otherwise
2 lawful in Maryland, but nonetheless are banned or restricted by Bill 4-21. MSI is thus aggrieved by
3 the passage of Bill 4-21. MSI has representational standing to sue on behalf its members who live in
4 Montgomery County or who travel through Montgomery County or who otherwise are adversely
5 affected by the County's unlawful actions.
6

7 2629. Plaintiff ENGAGE ARMAMENT LLC ("Engage"), is a Maryland corporation, and
8 is located at 701 E. Gude Dr., Ste 101, Rockville, MD 20850, within Montgomery County. Pursuant
9 to 18 U.S.C. § 923, Engage is a Type I and Type VII and Type X Federally licensed dealer and
10 manufacturer of firearms and explosive devices at its current location. See 27 C.F.R. § 478.41 *et seq.*
11 Pursuant to MD Code, Public Safety, § 5-106, Engage is a Maryland State licensed firearms dealer
12 and is thus authorized by State law to engage "in the business of selling, renting or transferring
13 regulated firearms." As part of its business, Engage manufactures firearm components, including
14 receivers, and then assembles such components into finished firearms which it then sells, all in full
15 compliance with Federal and State law. Engage is a dealer for machines and computer code for the
16 manufacture of firearms by individuals for personal use. It regularly demonstrates such computer code
17 to potential purchasers. From time to time, Engage stocks and sells unserialized items, which are not
18 receivers under Federal law, but which can be lawfully machined and built into firearms by the
19 purchaser for personal use. These otherwise lawful items are banned as "ghost guns" by Bill 4-21. As
20 part of its business, Engage may transfer firearms in the presence of a minor who is accompanied by
21 a parent. The business location of Engage is arguably within 100 yards of a "place of public assembly"
22 as defined by Bill 4-21.
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26 2730. Plaintiff Andrew Raymond is an individual co-owner of Engage, and resides in
27 Montgomery County, Maryland. His residence in Darnestown, Maryland is within 100 yards of a
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1 public street. Plaintiff Raymond regularly conducts the business activities of Engage. He is the father
2 of two minor children who reside with him at his residence in Montgomery County. He assembles
3 firearms in the presence of his children in his residence. He possesses in his home computer code
4 which may be used to manufacture firearms within the meaning of Bill 4-21. He possesses one or
5 more ghost guns at his residence and at his place of employment at Engage. As co-owner of Engage,
6 he has authorized more than one supervisory employee at Engage to wear and carry loaded firearms
7 within the business confines of Engage for their self-protection and for the protection of the business.
8 At Engage, he possesses more than one firearm for the protection of himself and his business. He
9 possesses computer code of the type regulated by Bill 4-21
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12 2831. Plaintiff Carlos Rabanales is an individual co-owner of Engage. He resides in
13 Frederick County, Maryland and regularly conducts the business activities of Engage. As co-owner
14 of Engage, he has authorized more than one supervisory employee at Engage to carry firearms within
15 the business confines of Engage for their self-protection and for the protection of the business. At
16 Engage, he possesses more than one firearm for the protection of himself and his business. He may
17 transport unserialized firearm parts and components to and from Engage as part of the business of
18 Engage.
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20 2932. Plaintiff Brandon Ferrell, is an individual supervisory employee of Engage, and
21 resides in Montgomery County, Maryland. His residence in Gaithersburg is arguably within 100 yards
22 of a place of public assembly, as defined by Bill 4-21. Pursuant to MD Code, Criminal Law, 4-
23 203(b)(7), he is considered to be a supervisory employee at Engage and wears and carries a fully
24 loaded handgun in the course of his employment at Engage, “within the confines of a business
25 establishment” as “authorized” by the owners of Engage. He possesses one or more “ghost guns” at
26 his residence and at his place of employment at Engage. He possesses computer code of the type
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1 regulated by Bill 4-21. Pursuant to MD Code, Criminal Law, 4-203(b)(7), he wears and carries a fully
 2 loaded handgun in the course of his employment at Engage, “within the confines of a business
 3 establishment” as “authorized” by the owners of Engage. He does not possess a wear and carry permit.

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 5 ~~3033.~~ Plaintiff Deryck Weaver, is an individual supervisory employee of Engage, and
 6 resides in Bethesda, Maryland. His residence is arguably within 100 yards of a “place of public
 7 assembly” as that term is defined in Bill 4-21. He is the father of one minor child who lives with him
 8 at his residence. He is a qualified handgun instructor within the meaning of MD Code, Public Safety,
 9 §5-101(q), as well as a National Rifle Association-certified handgun instructor and National Rifle
 10 Association-certified Chief Range Safety Officer. He possesses within his home one or more “ghost
 11 guns,” including a rifle and a pistol “ghost gun.” From time to time, he assembles a firearm in the
 12 presence of his minor child for the purposes of instruction. Pursuant to MD Code, Criminal Law, 4-
 13 203(b)(7), he wears and carries a fully loaded handgun in the course of his employment at Engage,
 14 “within the confines of a business establishment” as “authorized” by the owners of Engage. ~~He does~~
 15 ~~not possess a wear and carry permit.~~

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 18 ~~3134.~~ Plaintiff Joshua Edgar works as a contractor at Engage, and resides in Gaithersburg,
 19 Maryland. His residence is arguably within 100 yards of a place of public assembly as that term is
 20 defined in Bill 4-21. He possesses within his home one or more “ghost guns,” including a rifle and a
 21 pistol “ghost gun.” From time to time, he assembles a firearm in the presence of a minor child for
 22 purposes of instruction. He does not possess a wear and carry permit.

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 24 ~~3235.~~ Plaintiff I.C.E. FIREARMS & DEFENSIVE TRAINING, LLC, (“ICE Firearms”) is
 25 a Maryland corporation located at 24129 Pecan Grove Lane, Gaithersburg, Maryland. ICE Firearms
 26 provides firearm training to individuals with handguns, rifles and shotguns. ICE Firearms possesses
 27 computer code of the type regulated by Bill 4-21. ICE Firearms likewise possesses parts of firearms
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1 that are banned by Bill 4-21, including “unfinished receivers” arguably banned by Bill 4-21. ICE
 2 Firearms is arguably located within 100 yards of a “place of public assembly” as that term is defined
 3 in Bill 4-21. ICE Firearms provides instruction in the safe use of firearms.

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 5 3336. Plaintiff Ronald David is the owner and operator of ICE Firearms. He resides in
 6 Gaithersburg, Maryland and his home is arguably within 100 yards of a “place of public assembly”
 7 as that term is defined by Bill 4-21. He possesses computer code of the type regulated by Bill 4-21.
 8 He likewise possesses one or more receivers as defined and banned by Bill 4-21 as a “ghost gun.” He
 9 is a “qualified handgun instructor” within the meaning of MD Code, Public Safety, § 5-101(q), and a
 10 National Rifle Association-certified Training Counselor in every shooting discipline.

11
 12 3437. Plaintiff Nancy David resides in Gaithersburg, Maryland and her home is arguably
 13 within 100 yards of a “place of public assembly” as that term is defined by Bill 4-21. She possesses
 14 computer code of the type regulated by Bill 4-21. She is a “qualified handgun instructor” within the
 15 meaning of MD Code, Public Safety, § 5-101(q). ~~She does not possess a Maryland carry permit.~~

16 **Defendant:**

17
 18 3538. The Defendant is Montgomery County, Maryland, with its principal place and seat
 19 located in Rockville, Maryland. Montgomery County is a “person” for purposes of the relief sought
 20 by this suit within the meaning of MD Code, Courts and Judicial Proceedings, § 3-401.

21 **COUNT I – VIOLATIONS OF THE MARYLAND CONSTITUTION**

22
 23 3639. The Plaintiffs reallege and incorporate herein by reference all the foregoing
 24 allegations of this complaint.

25 3740. Bill 4-21 regulates “matters of significant interest to the entire state.” *Cole v. Secretary*
 26 *of State*, 249 Md. 425, 434, 240 A.2d 272, 278 (1968). Bill 4-21 “affects the rights of persons without

1 the area to carry on a business or to do the work incident to a trade, profession, or other calling within
 2 the area.” *Steimel v. Board*, 278 Md. 1, 5, 357 A.2d 386, 388 (1976).

3 41. The General Assembly has repeatedly debated and introduced legislation, in both the
 4 House of Delegates and in the Senate, attempting to address the subject matters regulated by Bill 4-
 5 21. One such bill, House Bill 740, passed the House of Delegates in 2019. More recently, the General
 6 Assembly has enacted into law Senate Bill 387 and House Bill 425. Senate Bill 387 was enacted
 7 under Article II, Section 17(b) of the Maryland Constitution as Chapter 19. House Bill 425 was
 8 enacted under Article II, Section 17(b) of the Maryland Constitution as Chapter 18. This legislative
 9 activity is strong evidence that the matter is of general, state-wide interest, thereby demonstrating that
 10 Bill 4-21 is not a “local law” within the meaning of Article XI-EA, § 3 of the Maryland Constitution
 11 and is thus *ultra vires*. See *Allied Vending, Inc. v. City of Bowie*, 332 Md. 279, 631 A.2d 77 (1993).

14 3842. Bill 4-21 has redefined the “place of public assembly” to include “a place where the
 15 public may assemble, whether the place is publicly or privately owned, including a park; place of
 16 worship; school; library; recreational facility; hospital; community health center; long-term facility;
 17 or multipurpose exhibition facility, such as a fairgrounds or conference center.” Such “place of public
 18 assembly includes all property associated with the place, such as a parking lot or grounds of a
 19 building.”

21 39.43. Bill 4-21’s definition of a “place of public assembly arguably encompasses every
 22 sidewalk, every restaurant, every coffee shop, and every private business in the entire County as all
 23 such locales may be places where the public “may” assemble either in the present or in the future.
 24 The term may even include private homes in so far as such homes “may” be used by two or more of
 25 the public from time to time in the present or in the future to “assemble.” Bill 4-21 regulates the
 26 totality of Montgomery County. It would be, as a practical matter, impossible for any person to travel
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1 through Montgomery County without passing through an area within 100 yards of such locales now
 2 regulated by Bill 4-21. Allowing county governments to expand their regulatory powers in this
 3 manner will create a nightmarish hodgepodge of local laws that vary from county to county, from city
 4 to city and from town to town, all of which could impose criminal penalties of the sort imposed by
 5 Montgomery County under Bill 4-21. Bill 4-21 directly and adversely affects the rights of non-
 6 residents of Montgomery County “to carry on a business or to do the work incident to a trade,
 7 profession, or other calling within the area.” *Dasch v. Jackson*, 170 Md. 251, 261, 183 A. 534, 538
 8 (1936). By regulating and criminalizing conduct that takes place within 100 yards of such locations,
 9 Montgomery County has exceeded its authority beyond that allowed by MD Code, Criminal Law, §
 10 4-209. Through the enactment of Bill 4-21, the County has effectively nullified the preemption
 11 provisions of Section 4-209 as well as the preemption provisions of MD Code, Public Safety, § 5-
 12 134(a), MD Code, Public Safety, § 5-207(a). ~~Bill 4-21 is not a local law within the meaning of Article~~
 13 ~~XI-E, § 3 of the Maryland Constitution and is thus *ultra vires*.~~

14 44. Bill 4-21 is not a “local law” within the meaning of Article XI-A, § 3 of the Maryland
 15 Constitution because it regulates “matters of significant interest to the entire state” and “deals with”
 16 a matter “which is of significant interest not just to any one county, but rather to more than one
 17 geographical subdivision, or even to the entire state.” *Cole v. Secretary of State*, 249 Md. 425, 434,
 18 240 A.2d 272 (1968). Bill 4-21 also “affects the rights of persons without the area to carry on a
 19 business or to do the work incident to a trade, profession, or other calling within the area.” *Steimel v.*
 20 *Board*, 278 Md. 1, 5, 357 A.2d 386, 388 (1976). Bill 4-21 is thus unconstitutional under Article XI-
 21 A, § 3 of the Maryland Constitution.

22 45. Under Section 3 of Article XI-A of the Maryland Constitution, all laws passed by the
 23 County are “subject to the Constitution and Public General Laws of this State.” As more fully set
 24

1 forth in Count II, below, Bill 4-21 conflicts and is inconsistent with “General Laws” passed by the
 2 General Assembly and is thus in violation of Article XI-A, § 3 of the Maryland Constitution for this
 3 additional reason.

4 46. Under Section 6 of Article XI-A of the Maryland Constitution, the home rule powers
 5 conferred on the County by Article XI-A “shall not be construed to authorize the exercise of any
 6 powers in excess of those conferred by the Legislature upon said Counties or City as this Article sets
 7 forth.” Under Section 6 of Article XI-A, the County’s home rule powers thus do not include the power
 8 to pass any law that is in conflict or inconsistent with “General Laws” passed by the General
 9 Assembly as otherwise specified in Section 3 of Article XI-A of the Maryland Constitution. Bill 4-21
 10 conflicts and is inconsistent with “General Laws” in violation of Section 3 of Article XI-A and thus
 11 is unconstitutional and *ultra vires* under Section 6 of Article XI-A as well.

14 COUNT II – VIOLATION OF THE EXPRESS POWERS ACT

15 4047. Plaintiffs reallege and incorporate herein by reference all the foregoing allegations of
 16 this complaint.

17 4148. Under the Express Powers Act, MD Code, Local Government, § 10-206, Montgomery
 18 County laws must be “not inconsistent with State law” and the County is barred from enacting laws
 19 that are “preempted by or in conflict with public general law.” Under Section 3 of Article XI-A of the
 20 Maryland Constitution, all laws passed by the County are “subject to the Constitution and Public
 21 General Laws of this State.”

22 4249. Bill 4-21 violates these provisions of the Express Powers Act and Section 3 of Article
 23 XI-A in multiple ways:

24 a. MD Code, Criminal Law, § 4-209(a) preempts the County regulation of the
 25 “purchase, sale, taxation, transfer, manufacture, repair, ownership, possession, and transportation” of
 26

1 all firearms, but allows the County to regulate such matters “within 100 yards of or in a park, church,
2 school, public building, and other place of public assembly.” By redefining a “place of public
3 assembly” to include all places where the public “may assemble” at the present or at some unspecified
4 date in the future and expressly including ordinary private property within that definition, the County
5 has vastly and illegally expanded the scope of its authority provided by Section 4-209 beyond the
6 bounds permitted by the language of Section 4-209. To the extent Bill 4-21 purports to apply to these
7 expanded areas, it is expressly preempted by the preemption provisions of Section 4-209(a).

9 *b.* Bill 4-21 bans the “transfer” of all firearms within 100 yards of the County’s
10 illegally redefined “place of public assembly.” In so far as Bill 4-21’s ban on such transfers includes
11 regulated firearms and to the extent Bill 4-21 purports to apply to expanded areas beyond those areas
12 permitted by Section 4-209, that ban is separately preempted by MD Code, Public Safety, § 5-134(a),
13 which provides that “[t]his section supersedes any restriction that a local jurisdiction in the State
14 imposes on the transfer by a private party of a regulated firearm, and the State preempts the right of
15 any local jurisdiction to regulate the transfer of a regulated firearm.”

16 *c.* Bill 4-21 bans the “sale” of all firearms within 100 yards of the County’s illegally
17 redefined “place of public assembly.” In so far as Bill 4-21’s ban on such sales includes rifles and
18 shotguns, and to the extent Bill 4-21 purports to apply to expanded areas beyond those areas permitted
19 by Section 4-209, that ban is preempted by MD Code, Public Safety, § 5-207(a), which provides that
20 “[t]his section supersedes any restriction that a local jurisdiction in the State imposes on the transfer
21 by a private party of a rifle or shotgun, and the State preempts the right of any local jurisdiction to
22 regulate the transfer of a rifle or shotgun.”

23 *d.* Bill 4-21 bans the “possession” of all firearms within 100 yards of the County’s
24 illegally redefined “place of public assembly.” In so far as Bill 4-21’s ban on such sales includes
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regulated firearms, including handguns, and to the extent Bill 4-21 purports to apply to expanded areas beyond those areas permitted by Section 4-209, that ban is preempted by MD Code, Public Safety, § 5-133(a) which provides that “[t]his section supersedes any restriction that a local jurisdiction in the State imposes on the possession by a private party of a regulated firearm, and the State preempts the right of any local jurisdiction to regulate the possession of a regulated firearm.

e. Bill 4-21 expressly precludes any person, including a parent, from giving, lending or otherwise transferring to a minor a “ghost gun or a major component of a ghost gun.” In so far as this provision regulates the temporary transfer of a regulated firearm, it illegally bans an activity that is expressly permitted by MD Code, Public Safety, § 5-133(d), which allows a minor to transfer and possess a regulated firearm under the active supervision of an adult with a parent’s permission. Such transfers often include instruction in the use of firearms. To the extent that Bill 4-21 burdens such instruction, Bill 4-21 is preempted by MD Code, Criminal Law, § 4-209(b)(2), which provides that “[a] county, municipal corporation, or special taxing district may not prohibit the teaching of or training in firearms safety, or other educational or sporting use of the items listed in subsection (a) of this section.” These provisions fully apply to instruction in the use of unserialized regulated firearms lawfully manufactured for personal use.

ef. Bill 4-21 expressly precludes any person, including a parent, from giving, lending or otherwise transferring to a minor a “ghost gun or a major component of a ghost gun,” including the slide of a handgun or a barrel of a rifle. MD Code, Criminal Law, § 4-104, expressly permits a minor child under the age of 16 to have access to any firearm if that access “is supervised by an individual at least 18 years old” or if the minor child under the age of 16 has a certificate of firearm and hunter safety issued under § 10-301.1 of the Natural Resources Article. By necessary implication, access to a firearm by a minor child between the ages of 16 and 18 is likewise permitted by Section 4-104

1 without any restriction. These provisions fully apply to the transfer of unserialized firearms lawfully
2 manufactured by an individual for personal use. Bill 4-21's ban on lending, giving, or transferring a
3 ghost gun to a minor is inconsistent with these provisions.

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5 *fg.* Bill 4-21 provides that a "person must not store or leave a ghost gun, an
6 undetectable gun, or a major component of a ghost gun or an undetectable gun, in a location that the
7 person knows or should know is accessible to a minor." MD Code, Criminal Law, § 4-104, expressly
8 permits a minor child under the age of 16 to have access to any firearm if that access "is supervised
9 by an individual at least 18 years old" or if the minor child under the age of 16 has a certificate of
10 firearm and hunter safety issued under § 10-301.1 of the Natural Resources Article. By necessary
11 implication, access to a firearm by a minor child between the ages of 16 and 18 is permitted by Section
12 4-104 without restriction. In so far as these provisions limit access to a ghost guns or components of
13 ghost guns to a minor in a manner that Section 4-104 permits, Bill 4-21 is inconsistent with Section
14 4-104.

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17 *gh.* Bill 4-21 expressly bans the transport, in a vehicle and otherwise, of a "ghost gun,"
18 within 100 yards of the County's illegally expanded "place of public assembly." This ban on transport
19 is inconsistent with MD Code, Criminal Law, § 4-203(b)(3), which provides that a person is permitted
20 to transport a handgun "on the person or in a vehicle while the person is transporting the handgun to
21 or from the place of legal purchase or sale, or to or from a bona fide repair shop, or between bona fide
22 residences of the person, or between the bona fide residence and place of business of the person, if
23 the business is operated and owned substantially by the person if each handgun is unloaded and carried
24 in an enclosed case or an enclosed holster." Transport of unloaded rifles and shotguns, including
25 unserialized rifles and shotguns, is permitted under Maryland law without restriction.
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1 *hi.* Bill 4-21 expressly bans the “transport,” in a vehicle and/or otherwise, of a “ghost
 2 gun” within 100 yards of the County’s illegally expanded “place of public assembly.” This ban is
 3 inconsistent with MD Code, Criminal Law, § 4-203(b)(5), which expressly permits “the moving by a
 4 bona fide gun collector of part or all of the collector’s gun collection from place to place for public or
 5 private exhibition if each handgun is unloaded and carried in an enclosed case or an enclosed holster.”
 6 Such transport and carriage of unloaded rifles and shotguns, including unserialized rifles and
 7 shotguns, are permitted under Maryland law without restriction.

9 *ii.* Bill 4-21 expressly bans the sale, transfer, possession or transport of a firearm,
 10 including a “ghost gun” or a “major component” of any firearm, within 100 yards of the County’s
 11 illegally expanded “place of public assembly.” These bans are inconsistent with and preempted by §
 12 6 of Ch. 13, of Session Laws of 1972 of Maryland, which expressly preempts all local law restrictions
 13 on the wearing, carrying, or transporting of handguns in the following language:
 14 “SEC. 6. Be it further enacted, That all restrictions imposed by the law, ordinances, or regulations of
 15 the political subdivisions on the wearing, carrying, or transporting of handguns are superseded by this
 16 Act, and the State of Maryland hereby preempts the right of the political subdivisions to regulate said
 17 matters.” See *Montgomery County v. Atlantic Guns, Inc.*, 302 Md. 540, 543-44, 489 A.2d 1114, 1115-
 18 16 (1985).

21 *jk.* Bill 4-21 expressly bans the mere possession in the home of a “ghost gun” if the
 22 home is within 100 yards of the County’s illegally expanded “place of public assembly.” As thus
 23 defined, this ban on home possession will extend to thousands of homes within 100 yards of Bill 4-
 24 21’s newly defined and illegally expanded “place of public assembly.” This ban on home possession
 25 is inconsistent with MD Code, Criminal Law, § 4-203(b)(6), which expressly permits “the wearing,
 26 carrying, or transporting of a handgun by a person on real estate that the person owns or leases or
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1 where the person resides....” Home possession of unserialized handguns, rifles and shotguns lawfully
2 manufactured for personal use is permitted under Maryland law without restriction.

3 *kl.* Bill 4-21 bans possession of a firearm or ammunition by a business, if the business
4 is within 100 yards of the County’s illegally expanded “place of public assembly.” However, Bill 4-
5 21 provides that the bans otherwise imposed by Section 57-11 of the County Code do not “apply to
6 the possession of one firearm, and ammunition for the firearm, at a business by either the owner who
7 has a permit to carry the firearm, or one authorized employee of the business who has a permit to
8 carry the firearm.” The requirement that the owner must have “a permit to carry the firearm” is
9 inconsistent with MD Code, Criminal Law, § 4-203(b)(6), which permits “the wearing, carrying, or
10 transporting of a handgun by a person . . . within the confines of a business establishment that the
11 person owns or leases.” Such persons are not required to possess or obtain a Maryland carry permit.
12 Bill 4-21’s limitation to possession of “one” firearm by the owner is likewise inconsistent with Section
13 4-203(b)(6), as that section imposes no limitation on the number of handguns that may be possessed,
14 worn, carried or transported under this provision of Section 4-203(b)(6). Transport, wear, carriage
15 and possession of rifles and shotguns, including unserialized rifles and shotguns, in a person’s
16 business are permitted under Maryland law without restriction.

17 *lm.* Bill 4-21 bans possession of a firearm or ammunition, if the business is within 100
18 yards of the County’s illegally expanded “place of public assembly.” However, Bill 4-21 provides
19 that the bans otherwise imposed by Section 57-11 of the County Code do not “apply to the possession
20 of one firearm, and ammunition for the firearm, at a business by ... one authorized employee of the
21 business who has a permit to carry the firearm.” The requirement that the “authorized employee” must
22 have “a permit to carry the firearm” is inconsistent with MD Code, Criminal Law, § 4-203(b)(7),
23 which expressly permits “the wearing, carrying, or transporting of a handgun by a supervisory
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employee: (i) in the course of employment; (ii) within the confines of the business establishment in which the supervisory employee is employed; and (iii) when so authorized by the owner or manager of the business establishment.” Such authorized persons covered by Section 4-203(b)(7) are not required to possess or obtain a Maryland carry permit to carry within the business confines of the employer’s business. Bill 4-21’s limitation to possession of “one” firearm by “one” authorized employee is likewise inconsistent with Section 4-203(b)(7), as that section imposes no limitation on the number of handguns or ammunition that may be possessed, worn, carried or transported under this provision of Section 4-203(b)(7), and imposes no limitation on the number of employees who may be “authorized” by the employer under Section 4-203(b)(7). Transport, wear, carriage and possession of rifles and shotguns, including unserialized rifles and shotguns, by business employees are permitted under Maryland law without restriction.

iii. Bill 4-21 defines “ghost gun” to include “an unfinished receiver.” Section 4-209 permits the County to regulate “ammunition for and components of a handgun, rifle, or shotgun,” but it does not empower the County to redefine such “components” to include an “unfinished receiver.” An unfinished frame or receiver that is not a “firearm” under Federal law is not a firearm under Maryland law and thus an “unfinished receiver” is fully legal in under Maryland law if such a receiver is sufficiently “unfinished” as to not constitute a “firearm.” By defining a “ghost gun” to include any “unfinished receiver,” Bill 4-21 has gone beyond the scope allowed for local regulation by Section 4-209 and is thus preempted by Section 4-209 and inconsistent with existing Maryland law.

o. Bill 4-21 regulates “ghost guns” in Montgomery County in a multitude of ways that are in direct conflict and inconsistent with the State-wide regulation of unserialized firearms imposed by Senate Bill 387, 2022 Session Laws, Chapter 19 and House Bill 425, 2022 Session Laws, Chapter 18, as more fully set forth in plaintiffs’ April 14, 2022, Supplemental Memorandum and in plaintiffs’

1 May 16, 2022, Memorandum In Response To Defendant's Submission Concerning HB 425 and SB
2 387, as filed with this Court. The April 14, 2022 and May 16, 2022 memoranda are incorporated
3 herein by reference.
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**COUNT III – VIOLATION OF THE MARYLAND TAKINGS CLAUSE AND
DUE PROCESS CLAUSE**

4350. Plaintiffs reallege and incorporate herein by reference all the foregoing allegations of this complaint. This Count arises under the Maryland Takings Clause, Article III, §_40 of the Maryland Constitution, and the Due Process Clause, Article 24 of the Maryland Declaration of Rights.

4451. Personal property interests of Maryland residents are protected by both the Maryland Takings Clause, Article III, §_40 of the Maryland Constitution, and the Due Process Clause, Article 24 of the Maryland Declaration of Rights. These provisions are interpreted *in pari materia* with the Fifth Amendment of the United States Constitution, fully encompass personal property and may afford more protection than the Fifth Amendment. *Dua v. Comcast Cable*, 370 Md. 604, 805 A.2d 1061, 1070-72 (2002).

45-52. Maryland's Taking Clause and Due Process Clause are violated "[w]henver a property owner is deprived of the beneficial use of his property or restraints are imposed that materially affect the property's value, without legal process or compensation." *Serio v. Baltimore County*, 384 Md. 373, 863 A.2d 952, 967 (2004).

46-53. Maryland's Taking Clause and Due Process Clause govern retrospective laws. "Retrospective statutes are those 'acts which operate on transactions which have occurred or rights and obligations which existed before passage of the act.'" *Muskin v. State Dept. of Assessments and Taxation*, 422 Md. 544, 30 A.3d 962, 969 (2011).

47-54. Under the Maryland's Taking Clause and Due Process Clause, "[n]o matter how 'rational' under particular circumstances, the State is constitutionally precluded from abolishing a vested property right or taking one person's property and giving it to someone else." *Dua v. Comcast Cable of Maryland, Inc.*, 370 Md. 604, 623, 805 A.2d 1061 (2002).

1 48-55. The property adversely affected by the provisions of Bill 4-21 constitute protected
 2 personal property within the meaning of the Maryland Takings Clause and Due Process Clause as the
 3 term property for these purposes “embraces ‘everything which has exchangeable value or goes to
 4 make up a man’s wealth.’” *Dodds v. Shamer*, 339 Md. 540, 663 A.2d 1318, 1322 (1995). The personal
 5 property regulated by Bill 4-21 has exchangeable value. Plaintiffs have vested property rights in the
 6 continued possession and use of the property regulated by Bill 4-21.

8 49-56. Bill 4-21 is a retrospective ordinance as it will deprive the plaintiffs of the beneficial
 9 use and possession of their lawful vested property rights and property that was lawfully acquired and
 10 possessed prior to the County’s enactment of Bill 4-21. The restraints and bans that are imposed by
 11 Bill 4-21 materially affect the value of this previously lawfully acquired and possessed property, all
 12 without legal process or compensation.

14 50-57. Bill 4-21 violates Maryland Takings Clause, Article III, §_40, and the Due Process
 15 Clause, Article 24 of the Maryland Declaration of Rights. Under Maryland law, a court may enjoin a
 16 statute that violates Article 40 “unless and until condemnation proceedings in accordance with law be
 17 had, and just compensation awarded and paid for tendered.” *Department of Natural Resources v.*
 18 *Welsh*, 308 Md. 54, 65, 521 A.2d 313, 318 (1986). Plaintiffs are entitled to declaratory and equitable
 19 relief for the unconstitutional taking of their vested property rights by Bill 4-21.

21 **COUNT IV – THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT**
 22 **AND ARTICLE 24 OF THE MARYLAND DECLARATION OF RIGHTS**

23 51-58. Plaintiffs reallege and incorporate herein by reference all the foregoing allegations of
 24 this complaint. This Count for violations of the Due Process Clause of the Fourteenth Amendment to
 25 the United States Constitution is brought pursuant to and arises under 42 U.S.C. § 1983. For purposes
 26 of this Count, defendant Montgomery County has acted under “color of state law” within the meaning
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1 of Section 1983 in enacting Bill 4-21. This Count also arises under Article 24 of the Maryland
2 Declaration of Rights.

3 ~~52-59.~~ The Due Process Clause of the Fourteenth Amendment to the United States
4 Constitution provides that no state shall “deprive any person of life, liberty, or property, without due
5 process of law.” Article 24 of the Maryland Declaration of Rights provides that “[t]hat no man ought
6 to be taken or imprisoned or disseized of his freehold, liberties or privileges, or outlawed, or exiled,
7 or, in any manner, destroyed, or deprived of his life, liberty or property, but by the judgment of his
8 peers, or by the Law of the land.”

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11 ~~53-60.~~ The Due Process Clause of the Fourteenth Amendment prohibits the enactment or
12 enforcement of vague legislation. *Sessions v. Dimaya*, 138 S.Ct. 1204, 1212 (2018) (“the prohibition
13 of vagueness in criminal statutes...is an ‘essential’ of due process, required by both ‘ordinary notions
14 of fair play and the settled rules of law’”). A penal statute must “define the criminal offense with
15 sufficient definiteness that ordinary people can understand what conduct is prohibited and in a manner
16 that does not encourage arbitrary and discriminatory enforcement.” *Kolender v. Lawson*, 461 U.S.
17 352, 357 (1983). “[A] vague law is no law at all.” *United States v. Davis*, 139 S. Ct. 2319, 2323
18 (2019).

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20 ~~54-61.~~ Such a statute need not be vague in all possible applications in order to be void for
21 vagueness. *Johnson v. United States*, 576 U.S. 591, 602 (2015) (“our holdings squarely contradict the
22 theory that a vague provision is constitutional merely because there is some conduct that clearly falls
23 within the provision’s grasp”). “*Johnson* made clear that our decisions ‘squarely contradict the theory
24 that a vague provision is constitutional merely because there is some conduct that clearly falls within
25 the provision’s grasp.’” *Dimaya*, 138 S.Ct. at 1214 n.3. A court “cannot construe a criminal statute
26 on the assumption that the Government will use it responsibly,” *United States v. Stevens*, 559 U.S.
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1 460, 480 (2010), and “cannot find clarity in a wholly ambiguous statute simply by relying on the
 2 benevolence or good faith of those enforcing it.” *Wollschlaeger v. Governor, Fla.*, 848F.3d 1293,
 3 1322 (11th Cir. 2017) (en banc).

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 5 ~~55-62.~~ Article 24 of the Maryland Declaration of Rights prohibits the enactment or
 6 enforcement of vague legislation. *Galloway v. State*, 365 Md. 599, 614, 781 A.2d 851 (2001) (“The
 7 void-for-vagueness doctrine as applied to the analysis of penal statutes requires that the statute be
 8 “sufficiently explicit to inform those who are subject to it what conduct on their part will render them
 9 liable to its penalties.”). Under Article 24, a statute must provide “legally fixed standards and adequate
 10 guidelines for police ... and others whose obligation it is to enforce, apply, and administer [it]” and
 11 “must eschew arbitrary enforcement in addition to being intelligible to the reasonable person.” (Id. at
 12 615).

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 15 ~~56-63.~~ Bill 4-21 is a penal statute as a violation of Bill 4-21 is a Class A violation that can
 16 result in a criminal fine and up to six months imprisonment for each day in which the violation
 17 continues. Bill 4-21 contains no *mens rea* requirement of any type and thus these punishments may
 18 be imposed without regard to the defendant’s intent or knowledge. Under the Due Process Clause of
 19 the Fourteenth Amendment, plaintiffs may bring a pre-enforcement action challenging Bill 4-21 as
 20 they are not required “to risk criminal prosecution to determine the proper scope of regulation.”
 21 *Dombrowski v. Pfister*, 380 U.S. 479, 487 (1965). Maryland law is in accord for purposes of allowing
 22 a pre-enforcement action arising under Article 24 of the Maryland Declaration of Rights. *Pizza de*
 23 *Joey, LLC v. Mayor of Baltimore*, 470 Md. 308, 343-44, 235 A.3d 873 (2020) (collecting cases).

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 26 ~~57-64.~~ Bill 4-21 criminally punishes conduct that takes place within 100 yards of “a place of
 27 public assembly,” which is defined as “a place where the public may assemble, whether the place is
 28 publicly or privately owned.” Such places include, but are not limited to, “a park; place of worship;

school; library; recreational facility; hospital; community health center; long-term facility; or multipurpose exhibition facility, such as a fairgrounds or conference center.” Bill 4-21 includes within these places “all property associated with the place, such as a parking lot or grounds of a building.”

~~58-65.~~ Bill 4-21 does not define “public,” and that term could arguably be read to include any person who may be present in Montgomery County for any reason. Bill 4-21 does not define “may assemble,” and thus that term could be read to include a meeting of two or more people in one place for any reason, including for every-day activities such as lunch. By enlarging the ordinance to reach into places where the public “may” assemble,” Bill 4-21 may be arguably read to encompass any location where it is possible for two or more members of the public to meet, either in the present or sometime in the undefined future. Bill 4-21 fails to provide any notice of the actual location of such places and it is impossible to predict or know where two or more members of the “public” “may” meet. These terms could change in their application from day to day. Plaintiffs are thus left to guess at where two or more members of “public” “may assemble.”

~~59-66.~~ Bill 4-21 bans conduct taking place within 100 yards of a “library,” but includes no definition of “library.” Bill 4-21 deleted the statute’s former definition of “library” as limited to a “public” library and expressly covers places regardless of “whether the place is publicly or privately owned.” The term “library” could thus be arguably read to include any “library” of any type or size, regardless of whether the library is in the home or private building if, at any time in the present or the future, two or more members of the undefined public “may” assemble in that library. Plaintiffs are left to guess as to the locations of such “libraries.”

~~60-67.~~ Bill 4-21 does not define “recreational facility,” but it does delete the statute’s former limitation to “government-owned or operated” recreational facility and thus the term “recreational facility” could be arguably read to include a backyard swing set or private playground or other place

where “recreation” may take place. Bill 4-21 adds to statute’s preexisting scope to include a “community health center” and “long-term facility,” but provides no definition for either type of facility. Bill 4-21 does not define “school,” but does delete the statute’s former limitation to “elementary or secondary” school, thereby arguably regulating within 100 yards of any “school” of any size and of any type, private or public, including locations where any organization, of any type, may present instruction of any kind. Plaintiffs are left to guess as to the locations encompassed within the vague use of these terms.

~~61-68.~~ Bill 4-21 does not define “park” but it does delete the ordinance’s former definition of “park” as including only a “government owned” park that was “identified by the Maryland-National Capital Park and Planning Commission.” The term “park” thus could be arguably read to include any grassy spot, a commercial “park” or a tract of private land attached to a country house if it possible for two or more members of the public to “assemble” in that privately owned “park.” Plaintiffs are left to guess as to the locations encompassed within the vague use of “park.”

~~62-69.~~ Bill 4-21 defines “ghost gun” to include “an unfinished receiver.” Bill 4-21 then purports, to ban the sale, rental, lending or the giving of an “unfinished receiver” to a minor or affording access to an “unfinished receiver” to a minor. Bill 4-21 also bans, within 100 yards of a “place of public assembly,” as illegally expanded by Bill 4-21, the sale, transfer, manufacture, assembly, possession or transport of an unfinished receiver, including possession of an unfinished receiver in the home. Bill 4-21 does not define “unfinished receiver.” An unfinished receiver that is not a “receiver” under Federal law is not a receiver under Maryland law and thus there is no definition for “unfinished receiver” that could be applied to Bill 4-21. Plaintiffs are left to guess as to the meaning of “unfinished receiver” as used in Bill 4-21.

1 ~~63-70.~~ Bill 4-21 defines “major component” of a firearm to include “the slide or
2 cylinder” and, in the case of a rifle or shotgun, the “barrel.” Bill 4-21 then purports, to ban the sale,
3 rental, lending or the giving of a “major component” of a ghost gun to a minor or affording access to
4 a “major component” to a minor. Bill 4-21 also bans, within 100 yards of its illegally defined place
5 of “public assembly,” the sale, transfer, possession, or transport of a “major component.” A “major
6 component” of a firearm, as defined by Bill 4-21, is not a firearm under Federal or Maryland law and
7 a “major component” as thus defined can be lawfully obtained, transferred and transported without
8 restrictions under Federal and Maryland law. A “major component,” as thus defined by Bill 4-21, can
9 be lawfully used to build a fully *serialized* firearm for personal use. There is no practical way to
10 distinguish a “major component” that can be used to build a *non-serialized* firearm from a major
11 component that can be used to build a *serialized* firearm. Bill 4-21 thus arguably can be read as
12 banning the building of *any serialized* firearm, including a firearm that is not a “ghost gun” under the
13 Bill 4-21’s own definition of a “ghost gun.” Bill 4-21 is self-contradictory, vague and leaves
14 enforcement of this provision to the arbitrary and discriminatory discretion of law enforcement
15 officials.
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19 ~~64-71.~~ Bill 4-21’s regulation of places where two or more members of the “public” “may”
20 assemble in the present or unknowable future provides no reasonable notice of the actual locations
21 that are criminally regulated by Bill 4-21. Bill 4-21’s use of vague and undefined terms deprives
22 ordinary people, including plaintiffs, of the ability to understand what conduct is prohibited and what
23 conduct is not. Bill 4-21’s use of vague terms, including its reach into the home and other private
24 property, permits and encourages arbitrary and discriminatory enforcement of its provisions in the
25 sanctity of the home and other places protected by the Fourth Amendment of the United States
26 Constitution. Bill 4-21 provides no standards for enforcement by law enforcement personnel or by
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1 other officials of the County who may be charged with its enforcement. Rather, Bill 4-21 hands off
 2 “to unelected prosecutors and judges,” the duty of defining criminal behavior thorough *ad hoc*
 3 discretionary enforcement decisions. *Davis*, 139 S.Ct. at 2323. Bill 4-21 is accordingly void for
 4 vagueness under the Due Process Clause of the Fourteenth Amendment and Article 24 of the
 5 Maryland Declaration of Rights, both facially and as applied to one or more of the individual
 6 plaintiffs.
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8 ~~65-72.~~ Each of the plaintiffs has engaged and intends to engage in conduct arguably regulated
 9 by the unconstitutionally vague provisions of Bill 4-21, including the actual or constructive possession
 10 of firearms, major components and “unfinished receivers.” Each of the plaintiffs is and has been
 11 chilled in the actions they may take by the prospect of enforcement of Bill 4-21’s unconstitutionally
 12 vague provisions. Each of the plaintiffs and MSI’s members are hindered or chilled in their right to
 13 live or work in Montgomery County or to otherwise travel through Montgomery County by the threat
 14 of arbitrary or discriminatory enforcement of the unconstitutionally vague provisions of Bill 4-21.
 15 Each of the plaintiffs has been harmed and is imminently threatened with future harm by the prospect
 16 of enforcement of the unconstitutionally vague provisions of Bill 4-21.
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18 ~~66-73.~~ Pursuant to 42 U.S.C. § 1983, plaintiffs are entitled to declaratory and equitable relief
 19 and compensatory damages, including nominal damages, for the foregoing violations of their Due
 20 Process rights under the Fourteenth Amendment. *Uzuegbunam v. Preczewski*, 141 S.Ct. 792 (2021).
 21 ~~The County’s wholesale and utter disregard of Plaintiffs’ Due Process rights is so reckless or callously~~
 22 ~~indifferent to the federally protected rights of plaintiffs as to warrant the imposition of further~~
 23 ~~sanctions to achieve punishment or deterrence. Accordingly, punitive damages are appropriate and~~
 24 ~~may be awarded by the trier of fact. *Smith v. Wade*, 461 U.S. 30 (1983).~~ Plaintiffs are likewise entitled
 25 to reasonable attorneys’ fees and costs pursuant to 42 U.S.C. § 1988, for the foregoing violations of
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1 their Due Process rights under the Fourteenth Amendment. Plaintiffs are entitled to declaratory and
2 equitable relief for their claims arising under Article 24 of the Maryland Declaration of Rights.
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COUNT V -- SECOND AMENDMENT

74. The Plaintiffs reallege and incorporate herein by reference all the foregoing allegations of this complaint.

75. The Second Amendment to the United States Constitution provides: “A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.” The Supreme Court has squarely held that the Second Amendment bestows an individual right to keep and bear arms and that right may be exercised by all responsible, law-abiding Americans. *District of Columbia v. Heller*, 554 U.S. 570 (2008). The Second Amendment is applicable to the States as incorporated through the Due Process Clause of Fourteenth Amendment and is a fundamental right. *McDonald v. City of Chicago*, 561 U.S. 742 (2010).

76. On June 23, 2022, the Supreme Court decided *New York State Rifle & Pistol Association, Inc. v. Bruen*, 142 S.Ct. 2111 (2022). In *Bruen*, the Supreme Court held that the Second Amendment right to bear arms means “a State may not prevent law-abiding citizens from publicly carrying handguns because they have not demonstrated a special need for self-defense.” Slip op. at 24-25 n.8. This holding abrogates the holding of the Maryland Court of Appeals in *Williams v. State*, 417 Md. 479, 496, 10 A.3d 1167 (2011), that the Second Amendment does not apply outside the home. Under *Bruen*, “the Second Amendment guarantees a general right to public carry.” *Bruen*, slip op. at 24.

77. The *Bruen* Court struck down as unconstitutional New York’s “proper cause” requirement for issuance of a permit to carry a handgun in public. The Court went on to reject the “means-end,” two-step, intermediate scrutiny analysis used by the lower courts to sustain gun regulations, holding that “[d]espite the popularity of this two-step approach, it is one step too many.” *Bruen*, slip op. at 10. The Court ruled that “the standard for applying the Second Amendment is as

1 follows: When the Second Amendment’s plain text covers an individual’s conduct, the Constitution
 2 presumptively protects that conduct. The government must then justify its regulation by
 3 demonstrating that it is consistent with the Nation’s historical tradition of firearm regulation.” *Bruen*
 4 slip op. at 15.

6 78. The historical analogue required by *Bruen* to justify a firearms regulation looks to
 7 1791 or, at the latest, 1868, when the 14th Amendment was adopted. See *Bruen*, slip op. at 25-26.
 8 That is because “‘Constitutional rights are enshrined with the scope they were understood to have
 9 when the people adopted them.’” *Bruen*, slip op. at 25, quoting *District of Columbia v. Heller*, 554
 10 U.S. 570, 634–635 (2008). 20th century and late 19th century statutes and regulations do “not provide
 11 insight into the meaning of the Second Amendment when it contradicts earlier evidence.” *Bruen*, slip
 12 op. at 58 n.28. Under *Bruen*, the historical analogue necessary to justify regulation must be “a well-
 13 established and representative historical analogue.” *Bruen*, slip op. at 21. Historical “outlier”
 14 requirements of a few jurisdictions are to be disregarded. *Bruen*, slip op. at 46 n.22, 57, 62. This
 15 historical analysis is a legal inquiry and does not require fact-finding by a court. *Bruen*, slip op. at 24-
 16 25 n.8.

19 79. *Bruen* holds that governments may regulate the public possession of firearms at
 20 “legislative assemblies, polling places, and courthouses” and notes that governments may also
 21 regulate firearms “in” schools and government buildings. *Bruen*, slip op. at 21, citing *Heller*, 554 U.S.
 22 at 599. *Bruen* states that “courts can use analogies to those historical regulations of ‘sensitive places’
 23 to determine that modern regulations prohibiting the carry of firearms in new and analogous sensitive
 24 places are constitutionally permissible.” (*Id.*). The *Bruen* Court rejected New York’s “attempt to
 25 characterize New York’s proper-cause requirement as “a ‘sensitive-place’ law,” ruling that
 26 “expanding the category of ‘sensitive places’ simply to all places of public congregation that are not
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1 isolated from law enforcement defines the category of ‘sensitive places’ far too broadly.” Slip op. at
 2 22. As the Court explained, “[p]ut simply, there is no historical basis for New York to effectively
 3 declare the island of Manhattan a ‘sensitive place’ simply because it is crowded and protected
 4 generally by the New York City Police Department.” (Id.).

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 6 80. The government bears the burden of proof to show the historical presence of such
 7 “well-established and representative” historical analogue regulations. See *Bruen*, at 52 (“we are not
 8 obliged to sift the historical materials for evidence to sustain New York’s statute. That is respondents’
 9 burden.”). Public safety concerns are not part of the analysis and cannot be used to justify any statute
 10 or regulation that restricts the general right to carry arms in public. Under *Bruen*, “when the Second
 11 Amendment’s plain text covers an individual’s conduct, the Constitution presumptively protects that
 12 conduct.” Slip op. at 8. A government “may not simply posit that the regulation promotes an important
 13 interest,” but rather “the government must demonstrate that the regulation is consistent with this
 14 Nation’s historical tradition of firearm regulation.” Id.

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 16 81. The text of the Second Amendment, as construed by the Supreme Court and lower
 17 courts, indisputably covers the “possession, sale, transport, and transfer” of firearms and ammunition
 18 as regulated by Bill 4-21 and Section 57-11 of the County Code. Bill 4-21 and County Code Section
 19 57-11 are not supported by any showing that the regulatory burdens on possession, transport, transfer
 20 or sale of firearms and/or ammunition that these regulatory provisions inflict are “consistent with this
 21 Nation’s historical tradition of firearm regulation.” Nothing in *Bruen* can be read to allow a State (or
 22 a municipality) to regulate or ban firearms at every location where the “public may assemble”
 23 regardless of whether the place is “publicly or privately owned,” in the manner specified by Bill 4-
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1 82. There is no appropriate historical analogue that would permit the County to ban all
2 possession, sale, transfer or transport of firearms or ammunition in or at a church or a park, much less
3 in any “other place of public assembly” as vastly defined by the County to include any place where
4 the public “may assemble” regardless of whether such place is on public or private land. Nor is there
5 any appropriate historical analogue for any such regulation within 100 yards of such locations.
6 Montgomery County is no more a “sensitive place” than is Manhattan.

8 83. Under the Second Amendment, the County may presumptively enact otherwise lawful
9 firearms and ammunition regulations for the five, specific locations identified in *Bruen* and *Heller*
10 viz, “in” schools, public buildings, polling places, courthouses and legislative assemblies, to the extent
11 such regulations are otherwise authorized by State law. The County may not enact or enforce any
12 provision of the County Code that operates in such a way as to “deny ordinary citizens their right to
13 public carry.” *Bruen*, slip op. at 30 n.9. The County may not enact or enforce firearms or ammunition
14 regulations for any location or place beyond the five, specific locations identified in *Bruen* and *Heller*
15 viz, “in” schools, public buildings, polling places, courthouses and legislative assemblies, without
16 proving that “a well-established and representative historical analogue” for any such regulation exists.
17 The County has not done so with respect to the locations regulated by Bill 4-21 and County Code
18 Section 57-11.
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21 84. Bill 4-21 and Section 57-11 of the County Code are *facially* unconstitutional under
22 the Second Amendment to the extent that Bill 4-21 and County Code Section 57-11 purport to impose
23 any regulatory restrictions on the possession, transfer, sale or transport of firearms and ammunition
24 in or at any place other than the five specific locations specified in *Bruen* and *Heller*. Bill 4-21 and
25 Section 57-11 of the County Code are *facially* unconstitutional under the Second Amendment to the
26 extent that Bill 4-21 and County Code Section 57-11 purport to impose any regulatory restrictions on
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1 the possession, transfer, sale or transport of firearms and ammunition in or at any place within 100
2 yards of *any* location.

3 85. Bill 4-21 and Section 57-11 of the County Code are unconstitutional under the Second
4 Amendment *as applied* to the named plaintiffs and to any member of plaintiff MSI to the extent that
5 Bill 4-21 and Section 57-11 purport to impose any regulatory restrictions on the possession, transfer,
6 sale or transport of firearms or ammunition in or at any place other than the five specific locations
7 specified in *Bruen* and *Heller*. Bill 4-21 and Section 57-11 of the County Code are unconstitutional
8 under the Second Amendment *as applied* to the named plaintiffs and to any member of plaintiff MSI
9 to the extent that Bill 4-21 and County Code Section 57-11 purport to impose any regulatory
10 restrictions on the possession, transfer, sale or transport of firearms or ammunition in or at any place
11 within 100 yards of *any* location.

14 86. To the extent that MD Code, Criminal Law, § 4-209(b) purports to authorize County
15 or local regulation for areas other than the five locations, or in any manner or scope beyond the manner
16 or scope permitted in *Heller* and *Bruen*, it is likewise unconstitutional under the Second Amendment
17 and thus cannot legally or constitutionally authorize such local regulation. To the extent that MD
18 Code, Criminal Law, § 4-209(b) purports to authorize County or local regulation on the possession,
19 transfer, sale or transport of firearms or ammunition in or at any place within 100 yards of *any* location,
20 it is likewise unconstitutional under the Second Amendment and thus cannot legally or
21 constitutionally authorize any such local regulation.

24 87. Pursuant to 42 U.S.C. § 1983, plaintiffs are entitled to declaratory and equitable relief
25 and compensatory damages, including nominal damages, for the foregoing violations of their Second
26 Amendment rights. *Uzuegbunam v. Preczewski*, 141 S.Ct. 792 (2021). Plaintiffs are likewise entitled
27

1 to reasonable attorneys' fees and costs pursuant to 42 U.S.C. § 1988. for the foregoing violations of
2 their Second Amendment rights.

3
4 **PRAYER FOR RELIEF**

5 WHEREFORE, the Plaintiffs respectfully request:

6 A. That this Court issue a declaratory judgment that Bill 4-21 is not a "local law," and is in
7 conflict and inconsistent with the "General Law" as enacted by the General Assembly is thus
8 unconstitutional under Article XI-EA, § 3 and Article XI-A, § 6, of the Maryland Constitution, as
9 more fully set forth in Count I above;

10 B. That this Court issue a declaratory judgment that Bill 4-21 violates the Express Powers
11 Act, MD Code, Local Government, § 10-206, in that it is in conflict or inconsistent with, and/or
12 preempted by, Maryland statutes, as more fully set forth in Count II, above;

13 C. That this Court issue a declaratory judgment that Bill 4-21 violates the Maryland Takings
14 Clause, Article III § 40, and the Due Process Clause of Article 24 of the Maryland Declaration of
15 Rights, in so far as it deprives plaintiffs and MSI members of the beneficial use of their lawfully
16 acquired, vested property rights, as more fully set forth in Count III above, enjoin enforcement of Bill
17 4-21 until compensation is paid, calculate the amount of compensation due, and order the County to
18 pay such compensation;

19 D. That this Court issue a declaratory judgment that Bill 4-21 is void for vagueness under the
20 Due Process Clause of the Fourteenth Amendment to the United States Constitution and Article 24
21 of the Maryland Declaration of Rights, as more fully set forth in Count IV above;

22 E. That this Court issue a declaratory judgment that Bill 4-21 and County Code Section 57-
23 11 are unconstitutional under the Second Amendment, as more fully set forth in Count V above.

1 F. That this Court find that all plaintiffs have been and/or will be irreparably harmed by the
2 conduct of defendant challenged in Counts I, II, III, IV and ~~IVV~~, and enter a preliminary and
3 permanent injunction barring the County from enforcing Bill 4-21 and County Code Section 57-11
4 against plaintiffs and the members of MSI;

5
6 FG. That this Court award plaintiffs compensatory and punitive damages for the County's
7 violations of the plaintiffs' Fourteenth Amendment constitutional rights, including without limitation,
8 nominal damages, as authorized by 42 U.S.C. § 1983;

9
10 GH. That this Court award attorney's fees and costs against defendant, as authorized by 42
11 U.S.C. § 1988;

12 HI. That this Court award the plaintiffs such other and further relief as in law and justice they
13 may be entitled to receive, including punitive damages.

14 **JURY DEMAND**

15 COME NOW the Plaintiffs, by and through counsel, demand a trial by jury as to all
16 issues triable by jury in this matter.

17
18 Respectfully submitted,

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21
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MD Atty No. 1905150005

27 Date: July 22, 2022

Counsel for Plaintiffs

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IN THE CIRCUIT COURT FOR MONTGOMERY COUNTY, MARYLAND

MARYLAND SHALL ISSUE, INC., *et al.*,

Plaintiffs,

vs.

Case No.: 485899V

MONTGOMERY COUNTY, MARYLAND,

Defendant.

CERTIFICATE OF SERVICE

The undersigned counsel hereby certifies that on July 22, 2022, a copy of the foregoing FIRST AMENDED VERIFIED COMPLAINT FOR DECLARATORY AND EQUITABLE RELIEF AND FOR COMPENSATORY DAMAGES, NOMINAL DAMAGES AND ATTORNEY'S FEES AND COSTS and attachments, including a "compare" document, were served on the following counsel for defendant Montgomery County via the MDEC e-filing system:

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/s/ Mark W. Pennak

MARK W. PENNAK
Counsel for Plaintiffs

IN THE CIRCUIT COURT FOR MONTGOMERY COUNTY, MARYLAND

MARYLAND SHALL ISSUE INC, et al.

Plaintiff

vs.

MONTGOMERY COUNTY MARYLAND

Defendant

Case No. Civil #485899V

ORDER

Upon consideration of the Joint Motion to Amend the Scheduling Order, filed July 7, 2022, it is this 15th day of July, 2022, by the Circuit Court for Montgomery County, Maryland,

ORDERED, that the Joint Motion to Amend the Scheduling Order, filed July 7, 2022, be and hereby is, **Granted in part**; and it is further


ORDERED, that the Scheduling Order shall be modified as follows:

DEADLINE: PRETRIAL STATEMENT DUE

10/19/2022

PRETRIAL/STATUS HEARING
ATTENDANCE REQUIRED

10/27/2022 at
10:30 AM


JAMES A. BONIFANT
County Administrative Judge

Entered: Clerk, Circuit Court for
Montgomery County, MD
July 15, 2022

Reason Code: Joint

IN THE CIRCUIT COURT FOR MONTGOMERY COUNTY, MARYLAND

MARYLAND SHALL ISSUE, INC., *et al.*,

Case No.: 485899V

Plaintiffs,

vs.

MONTGOMERY COUNTY, MARYLAND,

Defendant.

PLAINTIFFS' SUBMISSION OF SUPPLEMENTAL AUTHORITIES

Plaintiffs respectfully submit this memorandum for the purpose of bringing to the Court's attention the Supreme Court's recent decision in *New York State Rifle & Pistol Association, Inc. v. Bruen*, --- S.Ct. ---, 2022 WL 2022 WL 2251305 (U.S. June 23, 2022). A copy of the Court's opinion is attached for the convenience of the Court as Exhibit A. As explained in plaintiffs' motion for summary judgment and in their opposition to the County's motions, Bill 4-21 is based on the authority granted by MD Code, Criminal Law, 4-209(b)(1), which is but a narrow exception to the broad preemption of County firearms regulation set forth in subsection 4-209(a) of that statute. As detailed in plaintiffs' prior pleadings, there are multiple reasons to narrowly construe the authority to regulate allowed by subsection 4-209(b)(1), but an important reason is that the broad construction of subsection 4-209(b)(1), brings Bill 4-21 into conflict not only with multiple provisions of State law, but also with the Second Amendment to the Constitution. See Plaintiffs' Opp. to Def's Motion for Summary Judgment at 15-16 (arguing that subsection 4-209(b)(1) must be construed narrowly to avoid constitutional questions). The Supreme Court's recent decision in

1 *Bruen* makes that conflict even larger and more stark.

2 Accordingly, as detailed below, subsection 4-209(b)(1)(iii) must be very narrowly
3 construed to save it from being unconstitutional under *Bruen*. See *Galloway v. State*, 365 Md. 599,
4 625, 781 A.2d 851 (2001) (“we narrow the construction of the statute . . . to save it from possible
5 unconstitutional vagueness”); See also *Skilling v. United States*, 561 U.S. 358, 406 (2010) (“The
6 elementary rule is that every reasonable construction must be resorted to, in order to save a statute
7 from unconstitutionality.”) (citation omitted). As thus narrowly construed, Montgomery County
8 Bill 4-21, at issue here, plainly is unauthorized and thus preempted by the broad preemption
9 provisions of subsection 4-209(a). This Court should so hold. Such a holding would leave to
10 another day the question of whether subsection 4-209(b)(1)(iii) is, itself, unconstitutional under
11 *Bruen* in so far as it permits local regulation “within 100 yards of or in a park, church, school,
12 public building, and other place of public assembly.” On the other hand, if the Court should hold
13 that Bill 4-21 is authorized by subsection 4-209(b)(1), then the constitutionality of subsection 4-
14 209(b)(1) is squarely presented and should be decided. Any County regulation that relies on the
15 authority granted by an unconstitutional statute is, by necessity, also *ultra vires* and
16 unconstitutional.

17 We acknowledge, of course, that plaintiffs did not bring a separate Count in the Complaint
18 under the Second Amendment. At the time the Complaint was filed in this case, the Maryland
19 Court of Appeals had squarely held, in *Williams v. State*, 417 Md. 479, 496, 10 A.3d 1167 (2011),
20 that the Second Amendment did not apply outside the home at all, stating that “[i]f the Supreme
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1 Court...meant its holding [in *Heller* and *McDonald*]¹ to extend beyond home possession, it will
2 need to say so more plainly.” *Bruen* plainly abrogates that ruling in *Williams*. And, as noted above,
3 plaintiffs have consistently argued that Section 4-209(b) must be construed narrowly in light of
4 the Second Amendment. See Mem. In Support of Summary Judgment at 22-23, 33; Opp. to Defs’
5 Motion for Summary Judgment at 14-15. The Second Amendment was also raised in the
6 Complaint (at ¶11) and presented in written objections to Bill 4-21 filed with the Montgomery
7 County Council filed by plaintiff Maryland Shall Issue. See WRITTEN TESTIMONY OF MARK
8 W. PENNAK, PRESIDENT, MSI, IN OPPOSITION TO BILL 4-21 (Corrected) (Feb. 9, 2021),
9 attached to the Complaint as Exh. B. See Complaint at ¶25.

10 Indeed, in the comments submitted to County Council (as attached to the Complaint),
11 plaintiff Maryland Shall Issue argued that the constitutionality of laws must be “analyzed under
12 the ‘text, history and tradition’ test that was actually used in *Heller* and *McDonald*” and “[t]here
13 is no ‘text, history or tradition’ that could possibly support the types of bans imposed by this bill.”
14 Comments at 9. That is, of course, the very test adopted by the Supreme court in *Bruen*. See *Bruen*,
15 slip op. at 8. See also *Bruen*, (Kavanaugh, J., concurring, slip op. at 1). The scope of the Second
16 Amendment has thus been part of this case from the beginning. That the Second Amendment was
17 not raised as a separate claim is of no moment. See Rule 2-303(e) (“All pleadings shall be so
18 construed as to do substantial justice.”). See *Hays v. State*, 240 Md. 482, 486, 214 A.2d 573 (1965)
19 (holding no waiver of an existing right where the law had changed because of an intervening
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23 ¹ *District of Columbia v. Heller*, 554 U.S. 570 (2008), and *McDonald v. Chicago*, 561 U.S. 742
(2010).

1 decision of the Supreme Court).

2 However, should there be any doubt on that score and should the Court deem it necessary
3 to reach the issue of whether Bill 4-21 is unconstitutional under the Second Amendment, then the
4 Court should, at minimum, allow plaintiffs to amend the complaint under Rule 2-341(b) of the
5 Maryland Rules. See, e.g., *RRC Ne., LLC v. BAA*, 413 Md. 638, 673-74, 994 A.2d 430 (2010)
6 (“[L]eave to amend complaints should be granted freely to serve the ends of justice and ... it is the
7 rare situation in which a court should not grant leave to amend.”); *Hartford Accident & Indem. Co.*
8 *v. Scarlett Harbor Ass'n Ltd. P'ship*, 109 Md.App. 217, 248, 674 A.2d 106 (1996) (“Amendments
9 are allowed so that cases will be tried on their merits rather than upon the niceties of pleading and
10 to prevent the substantial injustice of a cause ... being defeated by formal slips or slight variances.”)
11 (internal quotations and citations omitted).

12 In *Bruen*, the Supreme Court held that the Second Amendment right to bear arms means
13 “a State may not prevent law-abiding citizens from publicly carrying handguns because they have
14 not demonstrated a special need for self-defense.” Slip op. at 24-25 n.8. Specifically, the Court
15 struck down as unconstitutional New York’s “proper cause” requirement for issuance of a permit
16 to carry a handgun in public. The Court went on to reject the “means-end,” two step, intermediate
17 scrutiny analysis used by the lower courts to sustain gun regulations, holding that “[d]espite the
18 popularity of this two-step approach, it is one step too many.” The Court ruled that “the standard
19 for applying the Second Amendment is as follows: When the Second Amendment’s plain text
20 covers an individual’s conduct, the Constitution presumptively protects that conduct. The
21 government must then justify its regulation by demonstrating that it is consistent with the Nation’s
22 historical tradition of firearm regulation.”

23 Under this test, “the government must affirmatively prove that its firearms regulation is

1 part of the historical tradition that delimits the outer bounds of the right to keep and bear arms.”
2 Id. at 15. Applying that test in *Bruen*, the Court rejected New York’s “attempt to characterize New
3 York’s proper-cause requirement as a ‘sensitive-place’ law,” ruling that “expanding the category
4 of ‘sensitive places’ simply to all places of public congregation that are not isolated from law
5 enforcement defines the category of ‘sensitive places’ far too broadly.” Slip op. at 22. Such a
6 definition, the Court explained, “would in effect exempt cities from the Second Amendment and
7 would eviscerate the general right to publicly carry arms for self-defense.” (Id.). As the Court
8 explained, “[p]ut simply, there is no historical basis for New York to effectively declare the island
9 of Manhattan a ‘sensitive place’ simply because it is crowded and protected generally by the New
10 York City Police Department.” (Id.).

11 *Bruen* is, of course, controlling authority. See, e.g., *State v. Madison*, 240 Md. 265, 275,
12 213 A.2d 880 (1965) (“Under our governmental system, the decisions of the Supreme Court must
13 be controlling even when, as here, the decision makes invalid a long-established provision of the
14 Maryland Constitution, previously held valid by this Court.”). Indeed, it provides precisely the
15 guidance that the Maryland Court of Appeals sought in *Williams*. The teachings of *Bruen* were
16 thus recognized and applied in *Fooks v. State*, --- A.3d ---, 2022 WL 2339412 (Ct. of Sp. Appeals,
17 June 29, 2022). There, the Court of Special Appeals sustained the conviction of the defendant for
18 illegal possession of a firearm by a disqualified person as consistent with *Bruen*, but recognized
19 that in *Bruen* “the Supreme Court declined to adopt both prongs of the two-prong test” for
20 assessing Second Amendment challenges, and had thus rejected “means-ends scrutiny in the
21 Second Amendment context.” Slip op. at 11. The Court of Special Appeals also recognized that
22 *Bruen* “defines the boundaries of firearms regulation *solely* in historical terms.” (Id. at
23 12)(emphasis supplied). A copy of *Fooks* is attached as Exhibit B.

1 Stated simply, *Bruen* makes clear that Bill 4-21 is flatly unconstitutional and Section 4-
 2 209(b)(1)(iii) must itself be narrowly construed in order to save it from being struck down as
 3 unconstitutional as well. As previously detailed, Section 4-209(a) broadly preempts County
 4 regulation of anything having to do with firearms, providing that “the State preempts the right of
 5 a county, municipal corporation, or special taxing district to regulate the purchase, sale, taxation,
 6 transfer, manufacture, repair, ownership, possession, and transportation of: (1) a handgun, rifle, or
 7 shotgun; and (2) ammunition for and components of a handgun, rifle, or shotgun.” Subsection
 8 (b)(1) then purports to provide exceptions to this broad preemption provision, stating that county,
 9 municipal corporation, or special taxing district may regulate the purchase, sale, transfer,
 10 ownership, possession, and transportation of the items listed in subsection (a) of this section: (i)
 11 with respect to minors; *** (iii) except as provided in paragraph (2) of this subsection, within 100
 12 yards of or in a park, church, school, public building, and other place of public assembly.”

13 The County here relies exclusively on subsection 4-209(b)(1)(iii), as giving it the authority
 14 to broadly define “place of public assembly” to include, as defined in Bill 4-21, “*a place where*
 15 *the public may assemble, whether the place is publicly or privately owned.*” This definition
 16 includes, but is not limited to any “park; place of worship; school; library; recreational facility;
 17 hospital; community health center; long-term facility; or multipurpose exhibition facility, such as
 18 fairgrounds or a conference center. A place of public assembly includes all property associated
 19 with the place, such as a parking lot or grounds of a building.” Bill 4-21, amending County Code
 20 § 57-1. Bill 4-21 then amends County Code §57-11(a) to provide: “In or within 100 yards of a
 21 place of public assembly, a person must not: (1) sell, transfer, possess, or transport a ghost gun,
 22 undetectable gun, handgun, rifle, or shotgun, or ammunition or major component for these
 23 firearms; or (2) sell, transfer, possess, or transport a firearm created through a 3D printing process.”

1 As is apparent, these amendments to Section 57.1 combined with the amendments to
2 Section 57.11(a), broadly prohibit the mere sale, transfer, possession, or transport of **any** firearm
3 or ammunition within 100 yards of any location “where the public may assemble,” **regardless of**
4 whether such place is “publicly or privately owned.” The only exception, remotely applicable here,
5 is for possession by a person “in the person’s own home,” and the possession of “one” firearm and
6 ammunition for that “one” firearm at a business by the owner or by “one” authorized employee.
7 See Section 57-11(b)(3),(4). Possession by the business owner and the employee are permitted
8 **only** if these individuals also have a wear and carry permit issued by the Maryland State Police
9 under MD Code, Public Safety, § 5-306. See Section 57-11(b)(4). The Bill’s sweep outside the
10 home is otherwise all-encompassing and covers every type of firearm and all types of ammunition.

11 As should be apparent, the bans and regulations imposed by Bill 4-21 are plainly
12 unconstitutional under *Bruen*. While the *Bruen* Court indicated that a State may utilize a “shall
13 issue” licensing system to regulate the right to carry a handgun outside the home, *Bruen*, slip op.
14 at 30 n.9, the Court stressed that such licensing system must be based on objective criteria, and not
15 be dependent on any discretionary decision-making by the licensing official. See *Bruen*, slip op.
16 4-5. Indeed, the *Bruen* Court expressly identified Maryland’s carry permit law, requiring a “good
17 and substantial reason” for a permit, as example of the type of “may issue” law that is, like New
18 York’s, invalid under this analysis. See slip op. at 6 n. 2. The Maryland Attorney General has thus
19 advised the Maryland State Police that the “good and substantial reason” requirement “is now
20 clearly unconstitutional” and that the State Police “is not required to continue enforcing—and, in
21 fact, may not continue to enforce—the ‘good and substantial reason’ requirement in processing
22 public-carry permit applications.” AG Opinion Letter at 1 (July 6, 2022) (attached as Exhibit C).
23 Here, the County does not purport to create any such “shall issue” licensing system for the bans

1 and limitations imposed by Section 57.11, as amended by Bill 4-21. Nor could it under any rational
2 reading of the limited authority granted by subsection 4-209(b)(1) or under the multiple
3 preemption provisions of State law. The bans and limitations imposed by Bill 4-21 simply do not
4 survive scrutiny under the text, history and tradition test applied in *Bruen*.

5 As noted, the Court of Special Appeals has already held that *Bruen* “defines the boundaries
6 of firearms regulation solely in historical terms.” *Fooks*, slip op at 12. There is simply no historical
7 analogue that could justify the bans or limitations imposed by Section 57-11, as amended by Bill
8 4-21. The County bears the burden of proof to show the historical presence of such analogous
9 regulations. See *Bruen*. at 52 (“we are not obliged to sift the historical materials for evidence to
10 sustain New York’s statute. That is respondents’ burden.”). Under *Bruen*, “when the Second
11 Amendment’s plain text covers an individual’s conduct, the Constitution presumptively protects
12 that conduct.” Slip op. at 8. Here, the text of the Second Amendment indisputably covers the
13 “possession, sale, transport, and transfer” of firearms and ammunition and thus such matters easily
14 fall within the text of the Second Amendment. In such cases, “the government may not simply
15 posit that the regulation promotes an important interest,” but rather “the government must
16 demonstrate that the regulation is consistent with this Nation’s historical tradition of firearm
17 regulation.” *Id.* The County has not and cannot make any such showing.

18 *Bruen* holds that governments may regulate firearms at “legislative assemblies, polling
19 places, and courthouses” (*Bruen*, slip op. at 21), and states that “courts can use analogies to those
20 historical regulations of ‘sensitive places’ to determine that modern regulations prohibiting the
21 carry of firearms in new and analogous sensitive places are constitutionally permissible.” (*Id.*).
22 But nothing in *Bruen* can be read to allow a State (or a municipality) to regulate every location
23 where the “public may assemble” regardless of whether the place is “publicly or privately owned.”

1 Quite to the contrary, the Court in *Bruen* expressly rejected New York’s attempt to regulate “all
2 places of public congregation,” holding that such a regulation “would eviscerate the general right
3 to publicly carry arms for self-defense.” (Slip op. at 22). The County’s attempt to regulate every
4 place where the public “may assemble” plainly fails under this holding in *Bruen*. Such places in
5 the County (including everywhere there is a sidewalk) are no more “sensitive” than “places of
6 public congregation” in Manhattan or elsewhere in New York.

7 Indeed, as previously explained, the County’s attempt to regulate every handgun, shotgun,
8 and rifle in public is at odds with State law, which leaves the regulation of long guns to federal
9 law. Nothing in State law, for example, purports to ban or even regulate the mere sale, possession
10 or transport of long guns by otherwise law-abiding adult citizens. See Plaintiffs’ Opp. to Def.
11 Motion for Summary Judgment at 18-19. Indeed, the State has expressly preempted local
12 regulation of the transfer of long guns. MD Code, Public Safety, § 5-207(a). While the possession,
13 sale, transfer, and transport of handguns (“regulated firearms” under State law) are tightly
14 regulated by the State, *Bruen* likewise makes clear that not even the State may regulate handguns
15 in such a way as to flatly deny a law-abiding citizen access to handguns for armed self-defense
16 outside the home or otherwise make such access subject to discretionary decision-making by
17 government officials. The same is obviously true, *a fortiori*, for long guns. And even prior to *Bruen*,
18 the State reserved regulation of handguns to itself by specifically preempting local regulation of
19 the possession, sale or transfer of regulated firearms. See Plaintiffs’ Opp. to Def. Motion for
20 Summary Judgment at 9-10. The County plainly enacted Bill 4-21 so as to expand its power to
21 severely regulate all aspects of the sale, transfer, transport and possession of all firearms
22 throughout the County, including in homes and businesses. That effort is unconstitutional under
23

1 *Bruen* and in direct conflict with the comprehensive system of regulation of firearms under State
2 law. It cannot be sustained.

3 **CONCLUSION**

4 For all the foregoing reasons, plaintiffs' motion for partial summary judgment should be
5 granted and defendant's motion to dismiss and for summary judgment should be denied.

6 Respectfully submitted,

7 /s/ Mark W. Pennak

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15 *Counsel for Plaintiffs*

16 Dated: July 10, 2022

CERTIFICATE OF SERVICE

The undersigned counsel hereby certifies that on July 10, 2022, a copy of the foregoing PLAINTIFFS' SUBMISSION OF SUPPLEMENTAL AUTHORITIES was served on the following counsel for defendant Montgomery County via the MDEC e-filing system:

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Sean Charles O Hara sean.ohara@montgomerycountymd.gov

/s/ Mark W. Pennak

MARK W. PENNAK
Counsel for Plaintiffs

(Slip Opinion)

OCTOBER TERM, 2021

1

Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Timber & Lumber Co.*, 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

**NEW YORK STATE RIFLE & PISTOL ASSOCIATION,
INC., ET AL. v. BRUEN, SUPERINTENDENT OF NEW
YORK STATE POLICE, ET AL.**

**CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR
THE SECOND CIRCUIT**

No. 20–843. Argued November 3, 2021—Decided June 23, 2022

The State of New York makes it a crime to possess a firearm without a license, whether inside or outside the home. An individual who wants to carry a firearm outside his home may obtain an unrestricted license to “have and carry” a concealed “pistol or revolver” if he can prove that “proper cause exists” for doing so. N. Y. Penal Law Ann. §400.00(2)(f). An applicant satisfies the “proper cause” requirement only if he can “demonstrate a special need for self-protection distinguishable from that of the general community.” *E.g., In re Klenosky*, 75 App. Div. 2d 793, 428 N. Y. S. 2d 256, 257.

Petitioners Brandon Koch and Robert Nash are adult, law-abiding New York residents who both applied for unrestricted licenses to carry a handgun in public based on their generalized interest in self-defense. The State denied both of their applications for unrestricted licenses, allegedly because Koch and Nash failed to satisfy the “proper cause” requirement. Petitioners then sued respondents—state officials who oversee the processing of licensing applications—for declaratory and injunctive relief, alleging that respondents violated their Second and Fourteenth Amendment rights by denying their unrestricted-license applications for failure to demonstrate a unique need for self-defense. The District Court dismissed petitioners’ complaint and the Court of Appeals affirmed. Both courts relied on the Second Circuit’s prior decision in *Kachalsky v. County of Westchester*, 701 F. 3d 81, which had sustained New York’s proper-cause standard, holding that the requirement was “substantially related to the achievement of an important governmental interest.” *Id.*, at 96.

EXHIBIT A

2 NEW YORK STATE RIFLE & PISTOL ASSN., INC. v. BRUEN

Syllabus

Held: New York’s proper-cause requirement violates the Fourteenth Amendment by preventing law-abiding citizens with ordinary self-defense needs from exercising their Second Amendment right to keep and bear arms in public for self-defense. Pp. 8–63.

(a) In *District of Columbia v. Heller*, 554 U. S. 570, and *McDonald v. Chicago*, 561 U. S. 742, the Court held that the Second and Fourteenth Amendments protect an individual right to keep and bear arms for self-defense. Under *Heller*, when the Second Amendment’s plain text covers an individual’s conduct, the Constitution presumptively protects that conduct, and to justify a firearm regulation the government must demonstrate that the regulation is consistent with the Nation’s historical tradition of firearm regulation. Pp. 8–22.

(1) Since *Heller* and *McDonald*, the Courts of Appeals have developed a “two-step” framework for analyzing Second Amendment challenges that combines history with means-end scrutiny. The Court rejects that two-part approach as having one step too many. Step one is broadly consistent with *Heller*, which demands a test rooted in the Second Amendment’s text, as informed by history. But *Heller* and *McDonald* do not support a second step that applies means-end scrutiny in the Second Amendment context. *Heller*’s methodology centered on constitutional text and history. It did not invoke any means-end test such as strict or intermediate scrutiny, and it expressly rejected any interest-balancing inquiry akin to intermediate scrutiny. Pp. 9–15.

(2) Historical analysis can sometimes be difficult and nuanced, but reliance on history to inform the meaning of constitutional text is more legitimate, and more administrable, than asking judges to “make difficult empirical judgments” about “the costs and benefits of firearms restrictions,” especially given their “lack [of] expertise” in the field. *McDonald*, 561 U. S., at 790–791 (plurality opinion). Federal courts tasked with making difficult empirical judgments regarding firearm regulations under the banner of “intermediate scrutiny” often defer to the determinations of legislatures. While judicial deference to legislative interest balancing is understandable—and, elsewhere, appropriate—it is not deference that the Constitution demands here. The Second Amendment “is the very product of an interest balancing by the people,” and it “surely elevates above all other interests the right of law-abiding, responsible citizens to use arms” for self-defense. *Heller*, 554 U. S., at 635. Pp. 15–17.

(3) The test that the Court set forth in *Heller* and applies today requires courts to assess whether modern firearms regulations are consistent with the Second Amendment’s text and historical understanding. Of course, the regulatory challenges posed by firearms today are not always the same as those that preoccupied the Founders in 1791 or the Reconstruction generation in 1868. But the Constitution

Syllabus

can, and must, apply to circumstances beyond those the Founders specifically anticipated, even though its meaning is fixed according to the understandings of those who ratified it. See, e.g., *United States v. Jones*, 565 U. S. 400, 404–405. Indeed, the Court recognized in *Heller* at least one way in which the Second Amendment’s historically fixed meaning applies to new circumstances: Its reference to “arms” does not apply “only [to] those arms in existence in the 18th century.” 554 U. S., at 582.

To determine whether a firearm regulation is consistent with the Second Amendment, *Heller* and *McDonald* point toward at least two relevant metrics: first, whether modern and historical regulations impose a comparable burden on the right of armed self-defense, and second, whether that regulatory burden is comparably justified. Because “individual self-defense is ‘the *central component*’ of the Second Amendment right,” these two metrics are “‘*central*’” considerations when engaging in an analogical inquiry. *McDonald*, 561 U. S., at 767 (quoting *Heller*, 554 U. S., at 599).

To be clear, even if a modern-day regulation is not a dead ringer for historical precursors, it still may be analogous enough to pass constitutional muster. For example, courts can use analogies to “longstanding” “laws forbidding the carrying of firearms in sensitive places such as schools and government buildings” to determine whether modern regulations are constitutionally permissible. *Id.*, at 626. That said, respondents’ attempt to characterize New York’s proper-cause requirement as a “sensitive-place” law lacks merit because there is no historical basis for New York to effectively declare the island of Manhattan a “sensitive place” simply because it is crowded and protected generally by the New York City Police Department. Pp. 17–22.

(b) Having made the constitutional standard endorsed in *Heller* more explicit, the Court applies that standard to New York’s proper-cause requirement. Pp. 23–62.

(1) It is undisputed that petitioners Koch and Nash—two ordinary, law-abiding, adult citizens—are part of “the people” whom the Second Amendment protects. See *Heller*, 554 U. S., at 580. And no party disputes that handguns are weapons “in common use” today for self-defense. See *id.*, at 627. The Court has little difficulty concluding also that the plain text of the Second Amendment protects Koch’s and Nash’s proposed course of conduct—carrying handguns publicly for self-defense. Nothing in the Second Amendment’s text draws a home/public distinction with respect to the right to keep and bear arms, and the definition of “bear” naturally encompasses public carry. Moreover, the Second Amendment guarantees an “individual right to possess and carry weapons in case of confrontation,” *id.*, at 592, and confrontation can surely take place outside the home. Pp. 23–24.

4 NEW YORK STATE RIFLE & PISTOL ASSN., INC. v. BRUEN

Syllabus

(2) The burden then falls on respondents to show that New York’s proper-cause requirement is consistent with this Nation’s historical tradition of firearm regulation. To do so, respondents appeal to a variety of historical sources from the late 1200s to the early 1900s. But when it comes to interpreting the Constitution, not all history is created equal. “Constitutional rights are enshrined with the scope they were understood to have when the people adopted them.” *Heller*, 554 U. S., at 634–635. The Second Amendment was adopted in 1791; the Fourteenth in 1868. Historical evidence that long predates or post-dates either time may not illuminate the scope of the right. With these principles in mind, the Court concludes that respondents have failed to meet their burden to identify an American tradition justifying New York’s proper-cause requirement. Pp. 24–62.

(i) Respondents’ substantial reliance on English history and custom before the founding makes some sense given *Heller*’s statement that the Second Amendment “codified a right ‘inherited from our English ancestors.’” 554 U. S., at 599. But the Court finds that history ambiguous at best and sees little reason to think that the Framers would have thought it applicable in the New World. The Court cannot conclude from this historical record that, by the time of the founding, English law would have justified restricting the right to publicly bear arms suited for self-defense only to those who demonstrate some special need for self-protection. Pp. 30–37.

(ii) Respondents next direct the Court to the history of the Colonies and early Republic, but they identify only three restrictions on public carry from that time. While the Court doubts that just three colonial regulations could suffice to show a tradition of public-carry regulation, even looking at these laws on their own terms, the Court is not convinced that they regulated public carry akin to the New York law at issue. The statutes essentially prohibited bearing arms in a way that spread “fear” or “terror” among the people, including by carrying of “dangerous and unusual weapons.” See 554 U. S., at 627. Whatever the likelihood that handguns were considered “dangerous and unusual” during the colonial period, they are today “the quintessential self-defense weapon.” *Id.*, at 629. Thus, these colonial laws provide no justification for laws restricting the public carry of weapons that are unquestionably in common use today. Pp. 37–42.

(iii) Only after the ratification of the Second Amendment in 1791 did public-carry restrictions proliferate. Respondents rely heavily on these restrictions, which generally fell into three categories: common-law offenses, statutory prohibitions, and “surety” statutes. None of these restrictions imposed a substantial burden on public carry analogous to that imposed by New York’s restrictive licensing regime.

Syllabus

Common-Law Offenses. As during the colonial and founding periods, the common-law offenses of “affray” or going armed “to the terror of the people” continued to impose some limits on firearm carry in the antebellum period. But there is no evidence indicating that these common-law limitations impaired the right of the general population to peaceable public carry.

Statutory Prohibitions. In the early to mid-19th century, some States began enacting laws that proscribed the concealed carry of pistols and other small weapons. But the antebellum state-court decisions upholding them evince a consensus view that States could not altogether prohibit the public carry of arms protected by the Second Amendment or state analogues.

Surety Statutes. In the mid-19th century, many jurisdictions began adopting laws that required certain individuals to post bond before carrying weapons in public. Contrary to respondents’ position, these surety statutes in no way represented direct precursors to New York’s proper-cause requirement. While New York presumes that individuals have no public carry right without a showing of heightened need, the surety statutes presumed that individuals had a right to public carry that could be burdened only if another could make out a specific showing of “reasonable cause to fear an injury, or breach of the peace.” Mass. Rev. Stat., ch. 134, §16 (1836). Thus, unlike New York’s regime, a showing of special need was required only *after* an individual was reasonably accused of intending to injure another or breach the peace. And, even then, proving special need simply avoided a fee.

In sum, the historical evidence from antebellum America does demonstrate that the manner of public carry was subject to reasonable regulation, but none of these limitations on the right to bear arms operated to prevent law-abiding citizens with ordinary self-defense needs from carrying arms in public for that purpose. Pp. 42–51.

(iv) Evidence from around the adoption of the Fourteenth Amendment also does not support respondents’ position. The “discussion of the [right to keep and bear arms] in Congress and in public discourse, as people debated whether and how to secure constitutional rights for newly free slaves,” *Heller*, 554 U. S., at 614, generally demonstrates that during Reconstruction the right to keep and bear arms had limits that were consistent with a right of the public to peaceably carry handguns for self-defense. The Court acknowledges two Texas cases—*English v. State*, 35 Tex. 473 and *State v. Duke*, 42 Tex. 455—that approved a statutory “reasonable grounds” standard for public carry analogous to New York’s proper-cause requirement. But these decisions were outliers and therefore provide little insight into how postbellum courts viewed the right to carry protected arms in public. See *Heller*, 554 U. S., at 632. Pp. 52–58.

6 NEW YORK STATE RIFLE & PISTOL ASSN., INC. v. BRUEN

Syllabus

(v) Finally, respondents point to the slight uptick in gun regulation during the late-19th century. As the Court suggested in *Heller*, however, late-19th-century evidence cannot provide much insight into the meaning of the Second Amendment when it contradicts earlier evidence. In addition, the vast majority of the statutes that respondents invoke come from the Western Territories. The bare existence of these localized restrictions cannot overcome the overwhelming evidence of an otherwise enduring American tradition permitting public carry. See *Heller*, 554 U. S., at 614. Moreover, these territorial laws were rarely subject to judicial scrutiny, and absent any evidence explaining why these unprecedented prohibitions on all public carry were understood to comport with the Second Amendment, they do little to inform “the origins and continuing significance of the Amendment.” *Ibid.*; see also *The Federalist* No. 37, p. 229. Finally, these territorial restrictions deserve little weight because they were, consistent with the transitory nature of territorial government, short lived. Some were held unconstitutional shortly after passage, and others did not survive a Territory’s admission to the Union as a State. Pp. 58–62.

(vi) After reviewing the Anglo-American history of public carry, the Court concludes that respondents have not met their burden to identify an American tradition justifying New York’s proper-cause requirement. Apart from a few late-19th-century outlier jurisdictions, American governments simply have not broadly prohibited the public carry of commonly used firearms for personal defense. Nor have they generally required law-abiding, responsible citizens to “demonstrate a special need for self-protection distinguishable from that of the general community” to carry arms in public. *Klenosky*, 75 App. Div. 2d, at 793, 428 N. Y. S. 2d, at 257. P. 62.

(c) The constitutional right to bear arms in public for self-defense is not “a second-class right, subject to an entirely different body of rules than the other Bill of Rights guarantees.” *McDonald*, 561 U. S., at 780 (plurality opinion). The exercise of other constitutional rights does not require individuals to demonstrate to government officers some special need. The Second Amendment right to carry arms in public for self-defense is no different. New York’s proper-cause requirement violates the Fourteenth Amendment by preventing law-abiding citizens with ordinary self-defense needs from exercising their right to keep and bear arms in public. Pp. 62–63.

818 Fed. Appx. 99, reversed and remanded.

THOMAS, J., delivered the opinion of the Court, in which ROBERTS, C. J., and ALITO, GORSUCH, KAVANAUGH, and BARRETT, JJ., joined. ALITO, J., filed a concurring opinion. KAVANAUGH, J., filed a concurring opinion, in which ROBERTS, C. J., joined. BARRETT, J., filed a concurring opinion. BREYER, J., filed a dissenting opinion, in which SOTOMAYOR and KAGAN, JJ., joined.

Cite as: 597 U. S. ____ (2022)

1

Opinion of the Court

NOTICE: This opinion is subject to formal revision before publication in the preliminary print of the United States Reports. Readers are requested to notify the Reporter of Decisions, Supreme Court of the United States, Washington, D. C. 20543, of any typographical or other formal errors, in order that corrections may be made before the preliminary print goes to press.

SUPREME COURT OF THE UNITED STATES

No. 20–843

**NEW YORK STATE RIFLE & PISTOL ASSOCIATION,
INC., ET AL., PETITIONERS *v.* KEVIN P. BRUEN, IN
HIS OFFICIAL CAPACITY AS SUPERINTENDENT
OF NEW YORK STATE POLICE, ET AL.**

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE SECOND CIRCUIT

[June 23, 2022]

JUSTICE THOMAS delivered the opinion of the Court.

In *District of Columbia v. Heller*, 554 U. S. 570 (2008), and *McDonald v. Chicago*, 561 U. S. 742 (2010), we recognized that the Second and Fourteenth Amendments protect the right of an ordinary, law-abiding citizen to possess a handgun in the home for self-defense. In this case, petitioners and respondents agree that ordinary, law-abiding citizens have a similar right to carry handguns publicly for their self-defense. We too agree, and now hold, consistent with *Heller* and *McDonald*, that the Second and Fourteenth Amendments protect an individual’s right to carry a handgun for self-defense outside the home.

The parties nevertheless dispute whether New York’s licensing regime respects the constitutional right to carry handguns publicly for self-defense. In 43 States, the government issues licenses to carry based on objective criteria. But in six States, including New York, the government further conditions issuance of a license to carry on a citizen’s showing of some additional special need. Because the State

2 NEW YORK STATE RIFLE & PISTOL ASSN., INC. v. BRUEN

Opinion of the Court

of New York issues public-carry licenses only when an applicant demonstrates a special need for self-defense, we conclude that the State’s licensing regime violates the Constitution.

I

A

New York State has regulated the public carry of handguns at least since the early 20th century. In 1905, New York made it a misdemeanor for anyone over the age of 16 to “have or carry concealed upon his person in any city or village of [New York], any pistol, revolver or other firearm without a written license . . . issued to him by a police magistrate.” 1905 N. Y. Laws ch. 92, §2, pp. 129–130; see also 1908 N. Y. Laws ch. 93, §1, pp. 242–243 (allowing justices of the peace to issue licenses). In 1911, New York’s “Sullivan Law” expanded the State’s criminal prohibition to the possession of all handguns—concealed or otherwise—without a government-issued license. See 1911 N. Y. Laws ch. 195, §1, p. 443. New York later amended the Sullivan Law to clarify the licensing standard: Magistrates could “issue to [a] person a license to have and carry concealed a pistol or revolver without regard to employment or place of possessing such weapon” only if that person proved “good moral character” and “proper cause.” 1913 N. Y. Laws ch. 608, §1, p. 1629.

Today’s licensing scheme largely tracks that of the early 1900s. It is a crime in New York to possess “any firearm” without a license, whether inside or outside the home, punishable by up to four years in prison or a \$5,000 fine for a felony offense, and one year in prison or a \$1,000 fine for a misdemeanor. See N. Y. Penal Law Ann. §§265.01–b (West 2017), 261.01(1) (West Cum. Supp. 2022), 70.00(2)(e) and (3)(b), 80.00(1)(a) (West 2021), 70.15(1), 80.05(1). Meanwhile, possessing a loaded firearm outside one’s home or place of business without a license is a felony punishable by

Opinion of the Court

up to 15 years in prison. §§265.03(3) (West 2017), 70.00(2)(c) and (3)(b), 80.00(1)(a).

A license applicant who wants to possess a firearm *at home* (or in his place of business) must convince a “licensing officer”—usually a judge or law enforcement officer—that, among other things, he is of good moral character, has no history of crime or mental illness, and that “no good cause exists for the denial of the license.” §§400.00(1)(a)–(n) (West Cum. Supp. 2022). If he wants to carry a firearm *outside* his home or place of business for self-defense, the applicant must obtain an unrestricted license to “have and carry” a concealed “pistol or revolver.” §400.00(2)(f). To secure that license, the applicant must prove that “proper cause exists” to issue it. *Ibid.* If an applicant cannot make that showing, he can receive only a “restricted” license for public carry, which allows him to carry a firearm for a limited purpose, such as hunting, target shooting, or employment. See, e.g., *In re O’Brien*, 87 N. Y. 2d 436, 438–439, 663 N. E. 2d 316, 316–317 (1996); *Babernitz v. Police Dept. of City of New York*, 65 App. Div. 2d 320, 324, 411 N. Y. S. 2d 309, 311 (1978); *In re O’Connor*, 154 Misc. 2d 694, 696–698, 585 N. Y. S. 2d 1000, 1003 (Westchester Cty. 1992).

No New York statute defines “proper cause.” But New York courts have held that an applicant shows proper cause only if he can “demonstrate a special need for self-protection distinguishable from that of the general community.” *E.g.*, *In re Klenosky*, 75 App. Div. 2d 793, 428 N. Y. S. 2d 256, 257 (1980). This “special need” standard is demanding. For example, living or working in an area “noted for criminal activity” does not suffice. *In re Bernstein*, 85 App. Div. 2d 574, 445 N. Y. S. 2d 716, 717 (1981). Rather, New York courts generally require evidence “of particular threats, attacks or other extraordinary danger to personal safety.” *In re Martinek*, 294 App. Div. 2d 221, 222, 743 N. Y. S. 2d 80, 81 (2002); see also *In re Kaplan*, 249 App. Div. 2d 199, 201, 673 N. Y. S. 2d 66, 68 (1998) (approving the New York

4 NEW YORK STATE RIFLE & PISTOL ASSN., INC. v. BRUEN

Opinion of the Court

City Police Department's requirement of "'extraordinary personal danger, documented by proof of recurrent threats to life or safety'" (quoting 38 N. Y. C. R. R. §5-03(b)).

When a licensing officer denies an application, judicial review is limited. New York courts defer to an officer's application of the proper-cause standard unless it is "arbitrary and capricious." *In re Bando*, 290 App. Div. 2d 691, 692, 735 N. Y. S. 2d 660, 661 (2002). In other words, the decision "must be upheld if the record shows a rational basis for it." *Kaplan*, 249 App. Div. 2d, at 201, 673 N. Y. S. 2d, at 68. The rule leaves applicants little recourse if their local licensing officer denies a permit.

New York is not alone in requiring a permit to carry a handgun in public. But the vast majority of States—43 by our count—are "shall issue" jurisdictions, where authorities must issue concealed-carry licenses whenever applicants satisfy certain threshold requirements, without granting licensing officials discretion to deny licenses based on a perceived lack of need or suitability.¹ Meanwhile, only six

¹See Ala. Code §13A-11-75 (Cum. Supp. 2021); Alaska Stat. §18.65.700 (2020); Ariz. Rev. Stat. Ann. §13-3112 (Cum. Supp. 2021); Ark. Code Ann. §5-73-309 (Supp. 2021); Colo. Rev. Stat. §18-12-206 (2021); Fla. Stat. §790.06 (2021); Ga. Code Ann. §16-11-129 (Supp. 2021); Idaho Code Ann. §18-3302K (Cum. Supp. 2021); Ill. Comp. Stat., ch. 430, §66/10 (West Cum. Supp. 2021); Ind. Code §35-47-2-3 (2021); Iowa Code §724.7 (2022); Kan. Stat. Ann. §75-7c03 (2021); Ky. Rev. Stat. Ann. §237.110 (Lexis Cum. Supp. 2021); La. Rev. Stat. Ann. §40:1379.3 (West Cum. Supp. 2022); Me. Rev. Stat. Ann., Tit. 25, §2003 (Cum. Supp. 2022); Mich. Comp. Laws §28.425b (2020); Minn. Stat. §624.714 (2020); Miss. Code Ann. §45-9-101 (2022); Mo. Rev. Stat. §571.101 (2016); Mont. Code Ann. §45-8-321 (2021); Neb. Rev. Stat. §69-2430 (2019); Nev. Rev. Stat. §202.3657 (2021); N. H. Rev. Stat. Ann. §159:6 (Cum. Supp. 2021); N. M. Stat. Ann. §29-19-4 (2018); N. C. Gen. Stat. Ann. §14-415.11 (2021); N. D. Cent. Code Ann. §62.1-04-03 (Supp. 2021); Ohio Rev. Code Ann. §2923.125 (2020); Okla. Stat., Tit. 21, §1290.12 (2021); Ore. Rev. Stat. §166.291 (2021); 18 Pa. Cons. Stat. §6109 (Cum. Supp. 2016); S. C. Code Ann. §23-31-215(A) (Cum. Supp. 2021); S. D. Codified Laws §23-7-7 (Cum. Supp. 2021); Tenn. Code Ann. §39-17-1366 (Supp. 2021); Tex. Govt. Code Ann. §411.177 (West Cum. Supp. 2021); Utah Code §53-5-

Cite as: 597 U. S. ____ (2022)

5

Opinion of the Court

States and the District of Columbia have “may issue” licensing laws, under which authorities have discretion to deny concealed-carry licenses even when the applicant satisfies the statutory criteria, usually because the applicant has not demonstrated cause or suitability for the relevant license. Aside from New York, then, only California, the District of Columbia, Hawaii, Maryland, Massachusetts, and New

704.5 (2022); Va. Code Ann. §18.2–308.04 (2021); Wash. Rev. Code §9.41.070 (2021); W. Va. Code Ann. §61–7–4 (2021); Wis. Stat. §175.60 (2021); Wyo. Stat. Ann. §6–8–104 (2021). Vermont has no permitting system for the concealed carry of handguns. Three States—Connecticut, Delaware, and Rhode Island—have discretionary criteria but appear to operate like “shall issue” jurisdictions. See Conn. Gen. Stat. §29–28(b) (2021); Del. Code, Tit. 11, §1441 (2022); R. I. Gen. Laws §11–47–11 (2002). Although Connecticut officials have discretion to deny a concealed-carry permit to anyone who is not a “suitable person,” see Conn. Gen. Stat. §29–28(b), the “suitable person” standard precludes permits only to those “individuals whose conduct has shown them to be lacking the essential character of temperament necessary to be entrusted with a weapon.” *Dwyer v. Farrell*, 193 Conn. 7, 12, 475 A.2d 257, 260 (1984) (internal quotation marks omitted). As for Delaware, the State has thus far processed 5,680 license applications and renewals in fiscal year 2022 and has denied only 112. See Del. Courts, Super. Ct., Carrying Concealed Deadly Weapon (June 9, 2022), <https://courts.delaware.gov/forms/download.aspx?ID=125408>. Moreover, Delaware appears to have no licensing requirement for open carry. Finally, Rhode Island has a suitability requirement, see R. I. Gen. Laws §11–47–11, but the Rhode Island Supreme Court has flatly denied that the “[d]emonstration of a proper showing of need” is a component of that requirement. *Gadomski v. Tavares*, 113 A.3d 387, 392 (2015). Additionally, some “shall issue” jurisdictions have so-called “constitutional carry” protections that allow certain individuals to carry handguns in public within the State without any permit whatsoever. See, e.g., A. Sherman, More States Remove Permit Requirement To Carry a Concealed Gun, *PolitiFact* (Apr. 12, 2022), <https://www.politifact.com/article/2022/apr/12/more-states-remove-permit-requirement-carry-concea/> (“Twenty-five states now have permitless concealed carry laws . . . The states that have approved permitless carry laws are: Alabama, Alaska, Arizona, Arkansas, Idaho, Indiana, Iowa, Georgia, Kansas, Kentucky, Maine, Mississippi, Missouri, Montana, New Hampshire, North Dakota, Ohio, Oklahoma, South Dakota, Tennessee, Texas, Utah, Vermont, West Virginia, and Wyoming”).

6 NEW YORK STATE RIFLE & PISTOL ASSN., INC. v. BRUEN

Opinion of the Court

Jersey have analogues to the “proper cause” standard.² All of these “proper cause” analogues have been upheld by the Courts of Appeals, save for the District of Columbia’s, which has been permanently enjoined since 2017. Compare *Gould v. Morgan*, 907 F. 3d 659, 677 (CA1 2018); *Kachalsky v. County of Westchester*, 701 F. 3d 81, 101 (CA2 2012); *Drake v. Filko*, 724 F. 3d 426, 440 (CA3 2013); *United States v. Masciandaro*, 638 F. 3d 458, 460 (CA4 2011); *Young v. Hawaii*, 992 F. 3d 765, 773 (CA9 2021) (en banc), with *Wrenn v. District of Columbia*, 864 F. 3d 650, 668 (CAD9 2017).

B

As set forth in the pleadings below, petitioners Brandon Koch and Robert Nash are law-abiding, adult citizens of Rensselaer County, New York. Koch lives in Troy, while Nash lives in Averill Park. Petitioner New York State Rifle & Pistol Association, Inc., is a public-interest group organized to defend the Second Amendment rights of New Yorkers. Both Koch and Nash are members.

In 2014, Nash applied for an unrestricted license to carry a handgun in public. Nash did not claim any unique danger to his personal safety; he simply wanted to carry a handgun for self-defense. In early 2015, the State denied Nash’s application for an unrestricted license but granted him a restricted license for hunting and target shooting only. In late 2016, Nash asked a licensing officer to remove the restrictions, citing a string of recent robberies in his neighborhood. After an informal hearing, the licensing officer denied the request. The officer reiterated that Nash’s existing license permitted him “to carry concealed for purposes of off

²See Cal. Penal Code Ann. §26150 (West 2021) (“Good cause”); D. C. Code §§7–2509.11(1) (2018), 22–4506(a) (Cum. Supp. 2021) (“proper reason,” i.e., “special need for self-protection”); Haw. Rev. Stat. §§134–2 (Cum. Supp. 2018), 134–9(a) (2011) (“exceptional case”); Md. Pub. Saf. Code Ann. §5–306(a)(6)(ii) (2018) (“good and substantial reason”); Mass. Gen. Laws, ch. 140, §131(d) (2020) (“good reason”); N. J. Stat. Ann. §2C:58–4(c) (West Cum. Supp. 2021) (“justifiable need”).

Cite as: 597 U. S. ____ (2022)

7

Opinion of the Court

road back country, outdoor activities similar to hunting,” such as “fishing, hiking & camping etc.” App. 41. But, at the same time, the officer emphasized that the restrictions were “intended to *prohibit* [Nash] from carrying concealed in ANY LOCATION typically open to and frequented by the general public.” *Ibid*.

Between 2008 and 2017, Koch was in the same position as Nash: He faced no special dangers, wanted a handgun for general self-defense, and had only a restricted license permitting him to carry a handgun outside the home for hunting and target shooting. In late 2017, Koch applied to a licensing officer to remove the restrictions on his license, citing his extensive experience in safely handling firearms. Like Nash’s application, Koch’s was denied, except that the officer permitted Koch to “carry to and from work.” *Id.*, at 114.

C

Respondents are the superintendent of the New York State Police, who oversees the enforcement of the State’s licensing laws, and a New York Supreme Court justice, who oversees the processing of licensing applications in Rensselaer County. Petitioners sued respondents for declaratory and injunctive relief under Rev. Stat. 1979, 42 U. S. C. §1983, alleging that respondents violated their Second and Fourteenth Amendment rights by denying their unrestricted-license applications on the basis that they had failed to show “proper cause,” *i.e.*, had failed to demonstrate a unique need for self-defense.

The District Court dismissed petitioners’ complaint and the Court of Appeals affirmed. See 818 Fed. Appx. 99, 100 (CA2 2020). Both courts relied on the Court of Appeals’ prior decision in *Kachalsky*, 701 F. 3d 81, which had sustained New York’s proper-cause standard, holding that the requirement was “substantially related to the achievement of an important governmental interest.” *Id.*, at 96.

8 NEW YORK STATE RIFLE & PISTOL ASSN., INC. v. BRUEN

Opinion of the Court

We granted certiorari to decide whether New York’s denial of petitioners’ license applications violated the Constitution. 593 U. S. ____ (2021).

II

In *Heller* and *McDonald*, we held that the Second and Fourteenth Amendments protect an individual right to keep and bear arms for self-defense. In doing so, we held unconstitutional two laws that prohibited the possession and use of handguns in the home. In the years since, the Courts of Appeals have coalesced around a “two-step” framework for analyzing Second Amendment challenges that combines history with means-end scrutiny.

Today, we decline to adopt that two-part approach. In keeping with *Heller*, we hold that when the Second Amendment’s plain text covers an individual’s conduct, the Constitution presumptively protects that conduct. To justify its regulation, the government may not simply posit that the regulation promotes an important interest. Rather, the government must demonstrate that the regulation is consistent with this Nation’s historical tradition of firearm regulation. Only if a firearm regulation is consistent with this Nation’s historical tradition may a court conclude that the individual’s conduct falls outside the Second Amendment’s “unqualified command.” *Konigsberg v. State Bar of Cal.*, 366 U. S. 36, 50, n. 10 (1961).³

³Rather than begin with its view of the governing legal framework, the dissent chronicles, in painstaking detail, evidence of crimes committed by individuals with firearms. See *post*, at 1–9 (opinion of BREYER, J.). The dissent invokes all of these statistics presumably to justify granting States greater leeway in restricting firearm ownership and use. But, as Members of the Court have already explained, “[t]he right to keep and bear arms . . . is not the only constitutional right that has controversial public safety implications.” *McDonald v. Chicago*, 561 U. S. 742, 783 (2010) (plurality opinion).

Opinion of the Court

A

Since *Heller* and *McDonald*, the two-step test that Courts of Appeals have developed to assess Second Amendment claims proceeds as follows. At the first step, the government may justify its regulation by “establish[ing] that the challenged law regulates activity falling outside the scope of the right as originally understood.” *E.g.*, *Kanter v. Barr*, 919 F. 3d 437, 441 (CA7 2019) (internal quotation marks omitted). But see *United States v. Boyd*, 999 F. 3d 171, 185 (CA3 2021) (requiring claimant to show “‘a burden on conduct falling within the scope of the Second Amendment’s guarantee’”). The Courts of Appeals then ascertain the original scope of the right based on its historical meaning. *E.g.*, *United States v. Focia*, 869 F. 3d 1269, 1285 (CA11 2017). If the government can prove that the regulated conduct falls beyond the Amendment’s original scope, “then the analysis can stop there; the regulated activity is categorically unprotected.” *United States v. Greeno*, 679 F. 3d 510, 518 (CA6 2012) (internal quotation marks omitted). But if the historical evidence at this step is “inconclusive or suggests that the regulated activity is *not* categorically unprotected,” the courts generally proceed to step two. *Kanter*, 919 F. 3d, at 441 (internal quotation marks omitted).

At the second step, courts often analyze “how close the law comes to the core of the Second Amendment right and the severity of the law’s burden on that right.” *Ibid.* (internal quotation marks omitted). The Courts of Appeals generally maintain “that the core Second Amendment right is limited to self-defense *in the home*.” *Gould*, 907 F. 3d, at 671 (emphasis added). But see *Wrenn*, 864 F. 3d, at 659 (“[T]he Amendment’s core generally covers carrying in public for self defense”). If a “core” Second Amendment right is burdened, courts apply “strict scrutiny” and ask whether the Government can prove that the law is “narrowly tailored to achieve a compelling governmental interest.” *Kolbe v. Hogan*, 849 F. 3d 114, 133 (CA4 2017) (internal quotation

10 NEW YORK STATE RIFLE & PISTOL ASSN., INC. v. BRUEN

Opinion of the Court

marks omitted). Otherwise, they apply intermediate scrutiny and consider whether the Government can show that the regulation is “substantially related to the achievement of an important governmental interest.” *Kachalsky*, 701 F. 3d, at 96.⁴ Both respondents and the United States largely agree with this consensus, arguing that intermediate scrutiny is appropriate when text and history are unclear in attempting to delineate the scope of the right. See Brief for Respondents 37; Brief for United States as *Amicus Curiae* 4.

B

Despite the popularity of this two-step approach, it is one step too many. Step one of the predominant framework is broadly consistent with *Heller*, which demands a test rooted in the Second Amendment’s text, as informed by history. But *Heller* and *McDonald* do not support applying means-end scrutiny in the Second Amendment context. Instead, the government must affirmatively prove that its firearms regulation is part of the historical tradition that delimits the outer bounds of the right to keep and bear arms.

1

To show why *Heller* does not support applying means-end scrutiny, we first summarize *Heller*’s methodological approach to the Second Amendment.

In *Heller*, we began with a “textual analysis” focused on

⁴ See *Association of N. J. Rifle & Pistol Clubs, Inc. v. Attorney General N. J.*, 910 F. 3d 106, 117 (CA3 2018); accord, *Worman v. Healey*, 922 F. 3d 26, 33, 36–39 (CA1 2019); *Libertarian Party of Erie Cty. v. Cuomo*, 970 F. 3d 106, 127–128 (CA2 2020); *Harley v. Wilkinson*, 988 F. 3d 766, 769 (CA4 2021); *National Rifle Assn. of Am., Inc. v. Bureau of Alcohol, Tobacco, Firearms, and Explosives*, 700 F. 3d 185, 194–195 (CA5 2012); *United States v. Greeno*, 679 F. 3d 510, 518 (CA6 2012); *Kanter v. Barr*, 919 F. 3d 437, 442 (CA7 2019); *Young v. Hawaii*, 992 F. 3d 765, 783 (CA9 2021) (en banc); *United States v. Reese*, 627 F. 3d 792, 800–801 (CA10 2010); *GeorgiaCarry.Org, Inc. v. Georgia*, 687 F. 3d 1244, 1260, n. 34 (CA11 2012); *United States v. Class*, 930 F. 3d 460, 463 (CA12 2019).

Opinion of the Court

the “normal and ordinary” meaning of the Second Amendment’s language. 554 U. S., at 576–577, 578. That analysis suggested that the Amendment’s operative clause—“the right of the people to keep and bear Arms shall not be infringed”—“guarantee[s] the individual right to possess and carry weapons in case of confrontation” that does not depend on service in the militia. *Id.*, at 592.

From there, we assessed whether our initial conclusion was “confirmed by the historical background of the Second Amendment.” *Ibid.* We looked to history because “it has always been widely understood that the Second Amendment . . . codified a *pre-existing* right.” *Ibid.* The Amendment “was not intended to lay down a novel principle but rather codified a right inherited from our English ancestors.” *Id.*, at 599 (alterations and internal quotation marks omitted). After surveying English history dating from the late 1600s, along with American colonial views leading up to the founding, we found “no doubt, on the basis of both text and history, that the Second Amendment conferred an individual right to keep and bear arms.” *Id.*, at 595.

We then canvassed the historical record and found yet further confirmation. That history included the “analogous arms-bearing rights in state constitutions that preceded and immediately followed adoption of the Second Amendment,” *id.*, at 600–601, and “how the Second Amendment was interpreted from immediately after its ratification through the end of the 19th century,” *id.*, at 605. When the principal dissent charged that the latter category of sources was illegitimate “postenactment legislative history,” *id.*, at 662, n. 28 (opinion of Stevens, J.), we clarified that “examination of a variety of legal and other sources to determine *the public understanding* of a legal text in the period after its enactment or ratification” was “a critical tool of constitutional interpretation,” *id.*, at 605 (majority opinion).

In assessing the postratification history, we looked to four

12 NEW YORK STATE RIFLE & PISTOL ASSN., INC. v. BRUEN

Opinion of the Court

different types of sources. First, we reviewed “[t]hree important founding-era legal scholars [who] interpreted the Second Amendment in published writings.” *Ibid.* Second, we looked to “19th-century cases that interpreted the Second Amendment” and found that they “universally support an individual right” to keep and bear arms. *Id.*, at 610. Third, we examined the “discussion of the Second Amendment in Congress and in public discourse” after the Civil War, “as people debated whether and how to secure constitutional rights for newly freed slaves.” *Id.*, at 614. Fourth, we considered how post-Civil War commentators understood the right. See *id.*, at 616–619.

After holding that the Second Amendment protected an individual right to armed self-defense, we also relied on the historical understanding of the Amendment to demark the limits on the exercise of that right. We noted that, “[l]ike most rights, the right secured by the Second Amendment is not unlimited.” *Id.*, at 626. “From Blackstone through the 19th-century cases, commentators and courts routinely explained that the right was not a right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose.” *Ibid.* For example, we found it “fairly supported by the historical tradition of prohibiting the carrying of ‘dangerous and unusual weapons’” that the Second Amendment protects the possession and use of weapons that are “‘in common use at the time.’” *Id.*, at 627 (first citing 4 W. Blackstone, *Commentaries on the Laws of England* 148–149 (1769); then quoting *United States v. Miller*, 307 U. S. 174, 179 (1939)). That said, we cautioned that we were not “undertak[ing] an exhaustive historical analysis today of the full scope of the Second Amendment” and moved on to considering the constitutionality of the District of Columbia’s handgun ban. 554 U. S., at 627.

We assessed the lawfulness of that handgun ban by scrutinizing whether it comported with history and tradition. Although we noted that the ban “would fail constitutional

Opinion of the Court

muster” “[u]nder any of the standards of scrutiny that we have applied to enumerated constitutional rights,” *id.*, at 628–629, we did not engage in means-end scrutiny when resolving the constitutional question. Instead, we focused on the historically unprecedented nature of the District’s ban, observing that “[f]ew laws in the history of our Nation have come close to [that] severe restriction.” *Id.*, at 629. Likewise, when one of the dissents attempted to justify the District’s prohibition with “founding-era historical precedent,” including “various restrictive laws in the colonial period,” we addressed each purported analogue and concluded that they were either irrelevant or “d[id] not remotely burden the right of self-defense as much as an absolute ban on handguns.” *Id.*, at 631–632; see *id.*, at 631–634. Thus, our earlier historical analysis sufficed to show that the Second Amendment did not countenance a “complete prohibition” on the use of “the most popular weapon chosen by Americans for self-defense in the home.” *Id.*, at 629.

2

As the foregoing shows, *Heller*’s methodology centered on constitutional text and history. Whether it came to defining the character of the right (individual or militia dependent), suggesting the outer limits of the right, or assessing the constitutionality of a particular regulation, *Heller* relied on text and history. It did not invoke any means-end test such as strict or intermediate scrutiny.

Moreover, *Heller* and *McDonald* expressly rejected the application of any “judge-empowering ‘interest-balancing inquiry’ that ‘asks whether the statute burdens a protected interest in a way or to an extent that is out of proportion to the statute’s salutary effects upon other important governmental interests.’” *Heller*, 554 U. S., at 634 (quoting *id.*, at 689–690 (BREYER, J., dissenting)); see also *McDonald*, 561 U. S., at 790–791 (plurality opinion) (the Second Amendment does not permit—let alone require—“judges to assess

14 NEW YORK STATE RIFLE & PISTOL ASSN., INC. v. BRUEN

Opinion of the Court

the costs and benefits of firearms restrictions” under means-end scrutiny). We declined to engage in means-end scrutiny because “[t]he very enumeration of the right takes out of the hands of government—even the Third Branch of Government—the power to decide on a case-by-case basis whether the right is *really worth* insisting upon.” *Heller*, 554 U. S., at 634. We then concluded: “A constitutional guarantee subject to future judges’ assessments of its usefulness is no constitutional guarantee at all.” *Ibid*.

Not only did *Heller* decline to engage in means-end scrutiny generally, but it also specifically ruled out the intermediate-scrutiny test that respondents and the United States now urge us to adopt. Dissenting in *Heller*, JUSTICE BREYER’s proposed standard—“ask[ing] whether [a] statute burdens a protected interest in a way or to an extent that is out of proportion to the statute’s salutary effects upon other important governmental interests,” *id.*, at 689–690 (dissenting opinion)—simply expressed a classic formulation of intermediate scrutiny in a slightly different way, see *Clark v. Jeter*, 486 U. S. 456, 461 (1988) (asking whether the challenged law is “substantially related to an important government objective”). In fact, JUSTICE BREYER all but admitted that his *Heller* dissent advocated for intermediate scrutiny by repeatedly invoking a quintessential intermediate-scrutiny precedent. See *Heller*, 554 U. S., at 690, 696, 704–705 (citing *Turner Broadcasting System, Inc. v. FCC*, 520 U. S. 180 (1997)). Thus, when *Heller* expressly rejected that dissent’s “interest-balancing inquiry,” 554 U. S., at 634 (internal quotation marks omitted), it necessarily rejected intermediate scrutiny.⁵

⁵ The dissent asserts that we misread *Heller* to eschew means-end scrutiny because *Heller* mentioned that the District of Columbia’s handgun ban “would fail constitutional muster” “[u]nder any of the standards of scrutiny that we have applied to enumerated constitutional rights.” *Heller*, 554 U. S., at 628–629; see *post*, at 23 (opinion of BREYER, J.). But *Heller*’s passing observation that the District’s ban would fail under any

Opinion of the Court

In sum, the Courts of Appeals' second step is inconsistent with *Heller's* historical approach and its rejection of means-end scrutiny. We reiterate that the standard for applying the Second Amendment is as follows: When the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct. The government must then justify its regulation by demonstrating that it is consistent with the Nation's historical tradition of firearm regulation. Only then may a court conclude that the individual's conduct falls outside the Second Amendment's "unqualified command." *Konigsberg*, 366 U. S., at 50, n. 10.

C

This Second Amendment standard accords with how we protect other constitutional rights. Take, for instance, the freedom of speech in the First Amendment, to which *Heller* repeatedly compared the right to keep and bear arms. 554 U. S., at 582, 595, 606, 618, 634–635. In that context, “[w]hen the Government restricts speech, the Government bears the burden of proving the constitutionality of its actions.” *United States v. Playboy Entertainment Group, Inc.*, 529 U. S. 803, 816 (2000); see also *Philadelphia Newspapers, Inc. v. Hepps*, 475 U. S. 767, 777 (1986). In some cases, that burden includes showing whether the expressive conduct falls outside of the category of protected speech. See *Illinois ex rel. Madigan v. Telemarketing Associates, Inc.*, 538 U. S. 600, 620, n. 9 (2003). And to carry that burden, the government must generally point to *historical* evidence about the reach of the First Amendment's protections. See,

heightened “standar[d] of scrutiny” did not supplant *Heller's* focus on constitutional text and history. Rather, *Heller's* comment “was more of a gilding-the-lily observation about the extreme nature of D.C.’s law,” *Heller v. District of Columbia*, 670 F. 3d 1244, 1277 (CA DC 2011) (Kavanaugh, J., dissenting), than a reflection of *Heller's* methodology or holding.

16 NEW YORK STATE RIFLE & PISTOL ASSN., INC. v. BRUEN

Opinion of the Court

e.g., *United States v. Stevens*, 559 U. S. 460, 468–471 (2010) (placing the burden on the government to show that a type of speech belongs to a “historic and traditional categor[y]” of constitutionally unprotected speech “long familiar to the bar” (internal quotation marks omitted)).

And beyond the freedom of speech, our focus on history also comports with how we assess many other constitutional claims. If a litigant asserts the right in court to “be confronted with the witnesses against him,” U. S. Const., Amdt. 6, we require courts to consult history to determine the scope of that right. See, e.g., *Giles v. California*, 554 U. S. 353, 358 (2008) (“admitting only those exceptions [to the Confrontation Clause] established at the time of the founding” (internal quotation marks omitted)). Similarly, when a litigant claims a violation of his rights under the Establishment Clause, Members of this Court “loo[k] to history for guidance.” *American Legion v. American Humanist Assn.*, 588 U. S. ___, ___ (2019) (plurality opinion) (slip op., at 25). We adopt a similar approach here.

To be sure, “[h]istorical analysis can be difficult; it sometimes requires resolving threshold questions, and making nuanced judgments about which evidence to consult and how to interpret it.” *McDonald*, 561 U. S., at 803–804 (Scalia, J., concurring). But reliance on history to inform the meaning of constitutional text—especially text meant to codify a *pre-existing* right—is, in our view, more legitimate, and more administrable, than asking judges to “make difficult empirical judgments” about “the costs and benefits of firearms restrictions,” especially given their “lack [of] expertise” in the field. *Id.*, at 790–791 (plurality opinion).⁶

⁶The dissent claims that *Heller*’s text-and-history test will prove unworkable compared to means-end scrutiny in part because judges are relatively ill equipped to “resolv[e] difficult historical questions” or engage in “searching historical surveys.” *Post*, at 26, 30. We are unpersuaded. The job of judges is not to resolve historical questions in the abstract; it

Opinion of the Court

If the last decade of Second Amendment litigation has taught this Court anything, it is that federal courts tasked with making such difficult empirical judgments regarding firearm regulations under the banner of “intermediate scrutiny” often defer to the determinations of legislatures. But while that judicial deference to legislative interest balancing is understandable—and, elsewhere, appropriate—it is not deference that the Constitution demands here. The Second Amendment “is the very *product* of an interest balancing by the people” and it “surely elevates above all other interests the right of law-abiding, responsible citizens to use arms” for self-defense. *Heller*, 554 U. S., at 635. It is this balance—struck by the traditions of the American people—that demands our unqualified deference.

D

The test that we set forth in *Heller* and apply today requires courts to assess whether modern firearms regulations are consistent with the Second Amendment’s text and historical understanding. In some cases, that inquiry will be fairly straightforward. For instance, when a challenged regulation addresses a general societal problem that has persisted since the 18th century, the lack of a distinctly similar historical regulation addressing that problem is relevant evidence that the challenged regulation is inconsistent with the Second Amendment. Likewise, if earlier generations addressed the societal problem, but did so through materially different means, that also could be evidence that

is to resolve *legal* questions presented in particular cases or controversies. That “legal inquiry is a refined subset” of a broader “historical inquiry,” and it relies on “various evidentiary principles and default rules” to resolve uncertainties. W. Baude & S. Sachs, *Originalism and the Law of the Past*, 37 L. & Hist. Rev. 809, 810–811 (2019). For example, “[i]n our adversarial system of adjudication, we follow the principle of party presentation.” *United States v. Sineneng-Smith*, 590 U. S. ___, ___ (2020) (slip op., at 3). Courts are thus entitled to decide a case based on the historical record compiled by the parties.

18 NEW YORK STATE RIFLE & PISTOL ASSN., INC. v. BRUEN

Opinion of the Court

a modern regulation is unconstitutional. And if some jurisdictions actually attempted to enact analogous regulations during this timeframe, but those proposals were rejected on constitutional grounds, that rejection surely would provide some probative evidence of unconstitutionality.

Heller itself exemplifies this kind of straightforward historical inquiry. One of the District’s regulations challenged in *Heller* “totally ban[ned] handgun possession in the home.” *Id.*, at 628. The District in *Heller* addressed a perceived societal problem—firearm violence in densely populated communities—and it employed a regulation—a flat ban on the possession of handguns in the home—that the Founders themselves could have adopted to confront that problem. Accordingly, after considering “founding-era historical precedent,” including “various restrictive laws in the colonial period,” and finding that none was analogous to the District’s ban, *Heller* concluded that the handgun ban was unconstitutional. *Id.*, at 631; see also *id.*, at 634 (describing the claim that “there were somewhat similar restrictions in the founding period” a “false proposition”).

New York’s proper-cause requirement concerns the same alleged societal problem addressed in *Heller*: “handgun violence,” primarily in “urban area[s].” *Ibid.* Following the course charted by *Heller*, we will consider whether “historical precedent” from before, during, and even after the founding evinces a comparable tradition of regulation. *Id.*, at 631. And, as we explain below, we find no such tradition in the historical materials that respondents and their *amici* have brought to bear on that question. See Part III–B, *infra*.

While the historical analogies here and in *Heller* are relatively simple to draw, other cases implicating unprecedented societal concerns or dramatic technological changes may require a more nuanced approach. The regulatory challenges posed by firearms today are not always the same

Opinion of the Court

as those that preoccupied the Founders in 1791 or the Reconstruction generation in 1868. Fortunately, the Founders created a Constitution—and a Second Amendment—“intended to endure for ages to come, and consequently, to be adapted to the various crises of human affairs.” *McCulloch v. Maryland*, 4 Wheat. 316, 415 (1819) (emphasis deleted). Although its meaning is fixed according to the understandings of those who ratified it, the Constitution can, and must, apply to circumstances beyond those the Founders specifically anticipated. See, e.g., *United States v. Jones*, 565 U. S. 400, 404–405 (2012) (holding that installation of a tracking device was “a physical intrusion [that] would have been considered a ‘search’ within the meaning of the Fourth Amendment when it was adopted”).

We have already recognized in *Heller* at least one way in which the Second Amendment’s historically fixed meaning applies to new circumstances: Its reference to “arms” does not apply “only [to] those arms in existence in the 18th century.” 554 U. S., at 582. “Just as the First Amendment protects modern forms of communications, and the Fourth Amendment applies to modern forms of search, the Second Amendment extends, *prima facie*, to all instruments that constitute bearable arms, even those that were not in existence at the time of the founding.” *Ibid.* (citations omitted). Thus, even though the Second Amendment’s definition of “arms” is fixed according to its historical understanding, that general definition covers modern instruments that facilitate armed self-defense. Cf. *Caetano v. Massachusetts*, 577 U. S. 411, 411–412 (2016) (*per curiam*) (stun guns).

Much like we use history to determine which modern “arms” are protected by the Second Amendment, so too does history guide our consideration of modern regulations that were unimaginable at the founding. When confronting such present-day firearm regulations, this historical inquiry that courts must conduct will often involve reasoning by analogy—a commonplace task for any lawyer or judge. Like all

20 NEW YORK STATE RIFLE & PISTOL ASSN., INC. v. BRUEN

Opinion of the Court

analogical reasoning, determining whether a historical regulation is a proper analogue for a distinctly modern firearm regulation requires a determination of whether the two regulations are “relevantly similar.” C. Sunstein, *On Analogical Reasoning*, 106 Harv. L. Rev. 741, 773 (1993). And because “[e]verything is similar in infinite ways to everything else,” *id.*, at 774, one needs “some metric enabling the analogizer to assess which similarities are important and which are not,” F. Schauer & B. Spellman, *Analogy, Expertise, and Experience*, 84 U. Chi. L. Rev. 249, 254 (2017). For instance, a green truck and a green hat are relevantly similar if one’s metric is “things that are green.” See *ibid.* They are not relevantly similar if the applicable metric is “things you can wear.”

While we do not now provide an exhaustive survey of the features that render regulations relevantly similar under the Second Amendment, we do think that *Heller* and *McDonald* point toward at least two metrics: how and why the regulations burden a law-abiding citizen’s right to armed self-defense. As we stated in *Heller* and repeated in *McDonald*, “individual self-defense is ‘the *central component*’ of the Second Amendment right.” *McDonald*, 561 U. S., at 767 (quoting *Heller*, 554 U. S., at 599); see also *id.*, at 628 (“the inherent right of self-defense has been central to the Second Amendment right”). Therefore, whether modern and historical regulations impose a comparable burden on the right of armed self-defense and whether that burden is comparably justified are “‘*central*’” considerations when engaging in an analogical inquiry. *McDonald*, 561 U. S., at 767 (quoting *Heller*, 554 U. S., at 599).⁷

⁷This does not mean that courts may engage in independent means-end scrutiny under the guise of an analogical inquiry. Again, the Second Amendment is the “product of an interest balancing *by the people*,” not the evolving product of federal judges. *Heller*, 554 U. S., at 635 (emphasis altered). Analogical reasoning requires judges to apply faithfully the balance struck by the founding generation to modern circumstances, and

Opinion of the Court

To be clear, analogical reasoning under the Second Amendment is neither a regulatory straightjacket nor a regulatory blank check. On the one hand, courts should not “uphold every modern law that remotely resembles a historical analogue,” because doing so “risk[s] endorsing outliers that our ancestors would never have accepted.” *Drummond v. Robinson*, 9 F. 4th 217, 226 (CA3 2021). On the other hand, analogical reasoning requires only that the government identify a well-established and representative historical *analogue*, not a historical *twin*. So even if a modern-day regulation is not a dead ringer for historical precursors, it still may be analogous enough to pass constitutional muster.

Consider, for example, *Heller*’s discussion of “longstanding” “laws forbidding the carrying of firearms in sensitive places such as schools and government buildings.” 554 U. S., at 626. Although the historical record yields relatively few 18th- and 19th-century “sensitive places” where weapons were altogether prohibited—*e.g.*, legislative assemblies, polling places, and courthouses—we are also aware of no disputes regarding the lawfulness of such prohibitions. See D. Kopel & J. Greenlee, The “Sensitive Places” Doctrine, 13 *Charleston L. Rev.* 205, 229–236, 244–247 (2018); see also Brief for Independent Institute as *Amicus Curiae* 11–17. We therefore can assume it settled that these locations were “sensitive places” where arms carrying could be prohibited consistent with the Second Amendment. And courts can use analogies to those historical regulations of “sensitive places” to determine that modern regulations prohibiting the carry of firearms in *new* and analogous sensitive places are constitutionally permissible.

Although we have no occasion to comprehensively define

contrary to the dissent’s assertion, there is nothing “[i]roni[c]” about that undertaking. *Post*, at 30. It is not an invitation to revise that balance through means-end scrutiny.

22 NEW YORK STATE RIFLE & PISTOL ASSN., INC. v. BRUEN

Opinion of the Court

“sensitive places” in this case, we do think respondents err in their attempt to characterize New York’s proper-cause requirement as a “sensitive-place” law. In their view, “sensitive places” where the government may lawfully disarm law-abiding citizens include all “places where people typically congregate and where law-enforcement and other public-safety professionals are presumptively available.” Brief for Respondents 34. It is true that people sometimes congregate in “sensitive places,” and it is likewise true that law enforcement professionals are usually presumptively available in those locations. But expanding the category of “sensitive places” simply to all places of public congregation that are not isolated from law enforcement defines the category of “sensitive places” far too broadly. Respondents’ argument would in effect exempt cities from the Second Amendment and would eviscerate the general right to publicly carry arms for self-defense that we discuss in detail below. See Part III–B, *infra*. Put simply, there is no historical basis for New York to effectively declare the island of Manhattan a “sensitive place” simply because it is crowded and protected generally by the New York City Police Department.

Like *Heller*, we “do not undertake an exhaustive historical analysis . . . of the full scope of the Second Amendment.” 554 U. S., at 626. And we acknowledge that “applying constitutional principles to novel modern conditions can be difficult and leave close questions at the margins.” *Heller v. District of Columbia*, 670 F. 3d 1244, 1275 (CA DC 2011) (Kavanaugh, J., dissenting). “But that is hardly unique to the Second Amendment. It is an essential component of judicial decisionmaking under our enduring Constitution.” *Ibid*. We see no reason why judges frequently tasked with answering these kinds of historical, analogical questions cannot do the same for Second Amendment claims.

Opinion of the Court

III

Having made the constitutional standard endorsed in *Heller* more explicit, we now apply that standard to New York’s proper-cause requirement.

A

It is undisputed that petitioners Koch and Nash—two ordinary, law-abiding, adult citizens—are part of “the people” whom the Second Amendment protects. See *Heller*, 554 U. S., at 580. Nor does any party dispute that handguns are weapons “in common use” today for self-defense. See *id.*, at 627; see also *Caetano*, 577 U. S., at 411–412. We therefore turn to whether the plain text of the Second Amendment protects Koch’s and Nash’s proposed course of conduct—carrying handguns publicly for self-defense.

We have little difficulty concluding that it does. Respondents do not dispute this. See Brief for Respondents 19. Nor could they. Nothing in the Second Amendment’s text draws a home/public distinction with respect to the right to keep and bear arms. As we explained in *Heller*, the “textual elements” of the Second Amendment’s operative clause—“the right of the people to keep and bear Arms, shall not be infringed”—“guarantee the individual right to possess and carry weapons in case of confrontation.” 554 U. S., at 592. *Heller* further confirmed that the right to “bear arms” refers to the right to “wear, bear, or carry . . . upon the person or in the clothing or in a pocket, for the purpose . . . of being armed and ready for offensive or defensive action in a case of conflict with another person.” *Id.*, at 584 (quoting *Muscarello v. United States*, 524 U. S. 125, 143 (1998) (Ginsburg, J., dissenting); internal quotation marks omitted).

This definition of “bear” naturally encompasses public carry. Most gun owners do not wear a holstered pistol at their hip in their bedroom or while sitting at the dinner table. Although individuals often “keep” firearms in their home, at the ready for self-defense, most do not “bear” (*i.e.*,

24 NEW YORK STATE RIFLE & PISTOL ASSN., INC. v. BRUEN

Opinion of the Court

carry) them in the home beyond moments of actual confrontation. To confine the right to “bear” arms to the home would nullify half of the Second Amendment’s operative protections.

Moreover, confining the right to “bear” arms to the home would make little sense given that self-defense is “the *central component* of the [Second Amendment] right itself.” *Heller*, 554 U. S., at 599; see also *McDonald*, 561 U. S., at 767. After all, the Second Amendment guarantees an “individual right to possess and carry weapons in case of confrontation,” *Heller*, 554 U. S., at 592, and confrontation can surely take place outside the home.

Although we remarked in *Heller* that the need for armed self-defense is perhaps “most acute” in the home, *id.*, at 628, we did not suggest that the need was insignificant elsewhere. Many Americans hazard greater danger outside the home than in it. See *Moore v. Madigan*, 702 F. 3d 933, 937 (CA7 2012) (“[A] Chicagoan is a good deal more likely to be attacked on a sidewalk in a rough neighborhood than in his apartment on the 35th floor of the Park Tower”). The text of the Second Amendment reflects that reality.

The Second Amendment’s plain text thus presumptively guarantees petitioners Koch and Nash a right to “bear” arms in public for self-defense.

B

Conceding that the Second Amendment guarantees a general right to public carry, contra, *Young*, 992 F. 3d, at 813, respondents instead claim that the Amendment “permits a State to condition handgun carrying in areas ‘frequented by the general public’ on a showing of a non-speculative need for armed self-defense in those areas,” Brief for Respondents 19 (citation omitted).⁸ To support

⁸The dissent claims that we cannot answer the question presented without giving respondents the opportunity to develop an evidentiary record fleshing out “how New York’s law is administered in practice, how

Opinion of the Court

that claim, the burden falls on respondents to show that New York's proper-cause requirement is consistent with this Nation's historical tradition of firearm regulation. Only if respondents carry that burden can they show that the pre-existing right codified in the Second Amendment, and made applicable to the States through the Fourteenth, does not protect petitioners' proposed course of conduct.

Respondents appeal to a variety of historical sources from the late 1200s to the early 1900s. We categorize these periods as follows: (1) medieval to early modern England; (2) the American Colonies and the early Republic; (3) antebellum America; (4) Reconstruction; and (5) the late-19th and early-20th centuries.

We categorize these historical sources because, when it comes to interpreting the Constitution, not all history is created equal. "Constitutional rights are enshrined with the scope they were understood to have *when the people adopted them*." *Heller*, 554 U. S., at 634–635 (emphasis added). The Second Amendment was adopted in 1791; the

much discretion licensing officers in New York possess, or whether the proper cause standard differs across counties." *Post*, at 20. We disagree. The dissent does not dispute that any applicant for an unrestricted concealed-carry license in New York can satisfy the proper-cause standard only if he has "'a special need for self-protection distinguishable from that of the general community.'" *Post*, at 13 (quoting *Kachalsky v. County of Westchester*, 701 F. 3d 81, 86 (CA2 2012)). And in light of the text of the Second Amendment, along with the Nation's history of firearm regulation, we conclude below that a State may not prevent law-abiding citizens from publicly carrying handguns because they have not demonstrated a special need for self-defense. See *infra*, at 62. That conclusion does not depend upon any of the factual questions raised by the dissent. Nash and Koch allege that they were denied unrestricted licenses because they had not "demonstrate[d] a special need for self-defense that distinguished [them] from the general public." App. 123, 125. If those allegations are proven true, then it simply does not matter whether licensing officers have applied the proper-cause standard differently to other concealed-carry license applicants; Nash's and Koch's constitutional rights to bear arms in public for self-defense were still violated.

26 NEW YORK STATE RIFLE & PISTOL ASSN., INC. v. BRUEN

Opinion of the Court

Fourteenth in 1868. Historical evidence that long predates either date may not illuminate the scope of the right if linguistic or legal conventions changed in the intervening years. It is one thing for courts to “reac[h] back to the 14th century” for English practices that “prevailed up to the ‘period immediately before and after the framing of the Constitution.’” *Sprint Communications Co. v. APCC Services, Inc.*, 554 U. S. 269, 311 (2008) (ROBERTS, C. J., dissenting). It is quite another to rely on an “ancient” practice that had become “obsolete in England at the time of the adoption of the Constitution” and never “was acted upon or accepted in the colonies.” *Dimick v. Schiedt*, 293 U. S. 474, 477 (1935).

As with historical evidence generally, courts must be careful when assessing evidence concerning English common-law rights. The common law, of course, developed over time. *Associated Gen. Contractors of Cal., Inc. v. Carpenters*, 459 U. S. 519, 533, n. 28 (1983); see also *Rogers v. Tennessee*, 532 U. S. 451, 461 (2001). And English common-law practices and understandings at any given time in history cannot be indiscriminately attributed to the Framers of our own Constitution. Even “the words of *Magna Charta*”—foundational as they were to the rights of America’s forefathers—“stood for very different things at the time of the separation of the American Colonies from what they represented originally” in 1215. *Hurtado v. California*, 110 U. S. 516, 529 (1884). Sometimes, in interpreting our own Constitution, “it [is] better not to go too far back into antiquity for the best securities of our liberties,” *Funk v. United States*, 290 U. S. 371, 382 (1933), unless evidence shows that medieval law survived to become our Founders’ law. A long, unbroken line of common-law precedent stretching from Bracton to Blackstone is far more likely to be part of our law than a short-lived, 14th-century English practice.

Similarly, we must also guard against giving postenactment history more weight than it can rightly bear. It is true

Opinion of the Court

that in *Heller* we reiterated that evidence of “how the Second Amendment was interpreted from immediately after its ratification through the end of the 19th century” represented a “critical tool of constitutional interpretation.” 554 U. S., at 605. We therefore examined “a variety of legal and other sources to determine *the public understanding* of [the Second Amendment] after its . . . ratification.” *Ibid.* And, in other contexts, we have explained that “‘a regular course of practice’ can ‘liquidate & settle the meaning of’ disputed or indeterminate ‘terms & phrases’” in the Constitution. *Chiafalo v. Washington*, 591 U. S. ___, ___ (2020) (slip op., at 13) (quoting Letter from J. Madison to S. Roane (Sept. 2, 1819), in 8 Writings of James Madison 450 (G. Hunt ed. 1908)); see also, e.g., *Houston Community College System v. Wilson*, 595 U. S. ___, ___ (2022) (slip op., at 5) (same); The Federalist No. 37, p. 229 (C. Rossiter ed. 1961) (J. Madison); see generally C. Nelson, *Stare Decisis and Demonstrably Erroneous Precedents*, 87 Va. L. Rev. 1, 10–21 (2001); W. Baude, *Constitutional Liquidation*, 71 Stan. L. Rev. 1 (2019). In other words, we recognize that “where a governmental practice has been open, widespread, and unchallenged since the early days of the Republic, the practice should guide our interpretation of an ambiguous constitutional provision.” *NLRB v. Noel Canning*, 573 U. S. 513, 572 (2014) (Scalia, J., concurring in judgment); see also *Myers v. United States*, 272 U. S. 52, 174 (1926); *Printz v. United States*, 521 U. S. 898, 905 (1997).

But to the extent later history contradicts what the text says, the text controls. “[L]iquidating’ indeterminacies in written laws is far removed from expanding or altering them.” *Gamble v. United States*, 587 U. S. ___, ___ (2019) (THOMAS, J., concurring) (slip op., at 13); see also Letter from J. Madison to N. Trist (Dec. 1831), in 9 Writings of James Madison 477 (G. Hunt ed. 1910). Thus, “post-ratification adoption or acceptance of laws that are *inconsistent* with the original meaning of the constitutional text

28 NEW YORK STATE RIFLE & PISTOL ASSN., INC. v. BRUEN

Opinion of the Court

obviously cannot overcome or alter that text.” *Heller*, 670 F. 3d, at 1274, n. 6 (Kavanaugh, J., dissenting); see also *Es-pinoza v. Montana Dept. of Revenue*, 591 U. S. ___, ___ (2020) (slip op., at 15).

As we recognized in *Heller* itself, because post-Civil War discussions of the right to keep and bear arms “took place 75 years after the ratification of the Second Amendment, they do not provide as much insight into its original meaning as earlier sources.” 554 U. S., at 614; cf. *Sprint Communications Co.*, 554 U. S., at 312 (ROBERTS, C. J., dissenting) (“The belated innovations of the mid- to late-19th-century courts come too late to provide insight into the meaning of [the Constitution in 1787]”). And we made clear in *Gamble* that *Heller’s* interest in mid- to late-19th-century commentary was secondary. *Heller* considered this evidence “only after surveying what it regarded as a wealth of authority for its reading—including the text of the Second Amendment and state constitutions.” *Gamble*, 587 U. S., at ___ (majority opinion) (slip op., at 23). In other words, this 19th-century evidence was “treated as mere confirmation of what the Court thought had already been established.” *Ibid.*

A final word on historical method: Strictly speaking, New York is bound to respect the right to keep and bear arms because of the Fourteenth Amendment, not the Second. See, e.g., *Barron ex rel. Tiernan v. Mayor of Baltimore*, 7 Pet. 243, 250–251 (1833) (Bill of Rights applies only to the Federal Government). Nonetheless, we have made clear that individual rights enumerated in the Bill of Rights and made applicable against the States through the Fourteenth Amendment have the same scope as against the Federal Government. See, e.g., *Ramos v. Louisiana*, 590 U. S. ___, ___ (2020) (slip op., at 7); *Timbs v. Indiana*, 586 U. S. ___, ___–___ (2019) (slip op., at 2–3); *Malloy v. Hogan*, 378 U. S. 1, 10–11 (1964). And we have generally assumed that the

Opinion of the Court

scope of the protection applicable to the Federal Government and States is pegged to the public understanding of the right when the Bill of Rights was adopted in 1791. See, e.g., *Crawford v. Washington*, 541 U. S. 36, 42–50 (2004) (Sixth Amendment); *Virginia v. Moore*, 553 U. S. 164, 168–169 (2008) (Fourth Amendment); *Nevada Comm’n on Ethics v. Carrigan*, 564 U. S. 117, 122–125 (2011) (First Amendment).

We also acknowledge that there is an ongoing scholarly debate on whether courts should primarily rely on the prevailing understanding of an individual right when the Fourteenth Amendment was ratified in 1868 when defining its scope (as well as the scope of the right against the Federal Government). See, e.g., A. Amar, *The Bill of Rights: Creation and Reconstruction* xiv, 223, 243 (1998); K. Lash, *Re-Speaking the Bill of Rights: A New Doctrine of Incorporation* (Jan. 15, 2021) (manuscript, at 2), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3766917 (“When the people adopted the Fourteenth Amendment into existence, they readopted the original Bill of Rights, and did so in a manner that invested those original 1791 texts with new 1868 meanings”). We need not address this issue today because, as we explain below, the public understanding of the right to keep and bear arms in both 1791 and 1868 was, for all relevant purposes, the same with respect to public carry.

* * *

With these principles in mind, we turn to respondents’ historical evidence. Throughout modern Anglo-American history, the right to keep and bear arms in public has traditionally been subject to well-defined restrictions governing the intent for which one could carry arms, the manner of carry, or the exceptional circumstances under which one could not carry arms. But apart from a handful of late-19th-century jurisdictions, the historical record compiled by respondents does not demonstrate a tradition of broadly

30 NEW YORK STATE RIFLE & PISTOL ASSN., INC. v. BRUEN

Opinion of the Court

prohibiting the public carry of commonly used firearms for self-defense. Nor is there any such historical tradition limiting public carry only to those law-abiding citizens who demonstrate a special need for self-defense.⁹ We conclude that respondents have failed to meet their burden to identify an American tradition justifying New York's proper-cause requirement. Under *Heller's* text-and-history standard, the proper-cause requirement is therefore unconstitutional.

1

Respondents' substantial reliance on English history and custom before the founding makes some sense given our statement in *Heller* that the Second Amendment "codified a right 'inherited from our English ancestors.'" 554 U. S., at 599 (quoting *Robertson v. Baldwin*, 165 U. S. 275, 281 (1897)); see also *Smith v. Alabama*, 124 U. S. 465, 478

⁹To be clear, nothing in our analysis should be interpreted to suggest the unconstitutionality of the 43 States' "shall-issue" licensing regimes, under which "a general desire for self-defense is sufficient to obtain a [permit]." *Drake v. Filko*, 724 F. 3d 426, 442 (CA3 2013) (Hardiman, J., dissenting). Because these licensing regimes do not require applicants to show an atypical need for armed self-defense, they do not necessarily prevent "law-abiding, responsible citizens" from exercising their Second Amendment right to public carry. *District of Columbia v. Heller*, 554 U. S. 570, 635 (2008). Rather, it appears that these shall-issue regimes, which often require applicants to undergo a background check or pass a firearms safety course, are designed to ensure only that those bearing arms in the jurisdiction are, in fact, "law-abiding, responsible citizens." *Ibid.* And they likewise appear to contain only "narrow, objective, and definite standards" guiding licensing officials, *Shuttlesworth v. Birmingham*, 394 U. S. 147, 151 (1969), rather than requiring the "appraisal of facts, the exercise of judgment, and the formation of an opinion," *Cantwell v. Connecticut*, 310 U. S. 296, 305 (1940)—features that typify proper-cause standards like New York's. That said, because any permitting scheme can be put toward abusive ends, we do not rule out constitutional challenges to shall-issue regimes where, for example, lengthy wait times in processing license applications or exorbitant fees deny ordinary citizens their right to public carry.

Opinion of the Court

(1888). But this Court has long cautioned that the English common law “is not to be taken in all respects to be that of America.” *Van Ness v. Pacard*, 2 Pet. 137, 144 (1829) (Story, J., for the Court); see also *Wheaton v. Peters*, 8 Pet. 591, 659 (1834); *Funk*, 290 U. S., at 384. Thus, “[t]he language of the Constitution cannot be interpreted safely except by reference to the common law and to British institutions *as they were when the instrument was framed and adopted*,” not as they existed in the Middle Ages. *Ex parte Grossman*, 267 U. S. 87, 108–109 (1925) (emphasis added); see also *United States v. Reid*, 12 How. 361, 363 (1852).

We interpret the English history that respondents and the United States muster in light of these interpretive principles. We find that history ambiguous at best and see little reason to think that the Framers would have thought it applicable in the New World. It is not sufficiently probative to defend New York’s proper-cause requirement.

To begin, respondents and their *amici* point to several medieval English regulations from as early as 1285 that they say indicate a longstanding tradition of restricting the public carry of firearms.¹³ See 13 Edw. 1, 102. The most prominent is the 1328 Statute of Northampton (or Statute), passed shortly after Edward II was deposed by force of arms and his son, Edward III, took the throne of a kingdom where “tendency to turmoil and rebellion was everywhere apparent throughout the realm.” N. Trenholme, *The Risings in the English Monastic Towns in 1327*, 6 Am. Hist. Rev. 650, 651 (1901). At the time, “[b]ands of malefactors, knights as well as those of lesser degree, harried the country, committing assaults and murders,” prompted by a more general “spirit of insubordination” that led to a “decay in English national life.” K. Vickers, *England in the Later Middle Ages* 107 (1926).

The Statute of Northampton was, in part, “a product of . . . the acute disorder that still plagued England.” A. Verduyn, *The Politics of Law and Order During the Early*

Opinion of the Court

Years of Edward III, 108 Eng. Hist. Rev. 842, 850 (1993). It provided that, with some exceptions, Englishmen could not “come before the King’s Justices, or other of the King’s Ministers doing their office, with force and arms, nor bring no force in affray of the peace, nor to go nor ride armed by night nor by day, in Fairs, Markets, nor in the presence of the Justices or other Ministers, nor in no part elsewhere, upon pain to forfeit their Armour to the King, and their Bodies to Prison at the King’s pleasure.” 2 Edw. 3 c. 3 (1328).

Respondents argue that the prohibition on “rid[ing]” or “go[ing] . . . armed” was a sweeping restriction on public carry of self-defense weapons that would ultimately be adopted in Colonial America and justify onerous public-carry regulations. Notwithstanding the ink the parties spill over this provision, the Statute of Northampton—at least as it was understood during the Middle Ages—has little bearing on the Second Amendment adopted in 1791. The Statute of Northampton was enacted nearly 20 years before the Black Death, more than 200 years before the birth of Shakespeare, more than 350 years before the Salem Witch Trials, more than 450 years before the ratification of the Constitution, and nearly 550 years before the adoption of the Fourteenth Amendment.

The Statute’s prohibition on going or riding “armed” obviously did not contemplate handguns, given they did not appear in Europe until about the mid-1500s. See K. Chase, *Firearms: A Global History to 1700*, p. 61 (2003). Rather, it appears to have been centrally concerned with the wearing of armor. See, e.g., *Calendar of the Close Rolls, Edward III, 1330–1333*, p. 131 (Apr. 3, 1330) (H. Maxwell-Lyte ed. 1898); *id.*, at 243 (May 28, 1331); *id.*, *Edward III, 1327–1330*, at 314 (Aug. 29, 1328) (1896). If it did apply beyond armor, it applied to such weapons as the “launcegay,” a 10- to 12-foot-long lightweight lance. See 7 Rich. 2 c. 13 (1383); 20 Rich. 2 c. 1 (1396).

The Statute’s apparent focus on armor and, perhaps,

Opinion of the Court

weapons like launcegays makes sense given that armor and lances were generally worn or carried only when one intended to engage in lawful combat or—as most early violations of the Statute show—to breach the peace. See, e.g., Calendar of the Close Rolls, Edward III, 1327–1330, at 402 (July 7, 1328); *id.*, Edward III, 1333–1337, at 695 (Aug. 18, 1336) (1898). Contrast these arms with daggers. In the medieval period, “[a]lmost everyone carried a knife or a dagger in his belt.” H. Peterson, *Daggers and Fighting Knives of the Western World* 12 (2001). While these knives were used by knights in warfare, “[c]ivilians wore them for self-protection,” among other things. *Ibid.* Respondents point to no evidence suggesting the Statute applied to the smaller medieval weapons that strike us as most analogous to modern handguns.

When handguns were introduced in England during the Tudor and early Stuart eras, they did prompt royal efforts at suppression. For example, Henry VIII issued several proclamations decrying the proliferation of handguns, and Parliament passed several statutes restricting their possession. See, e.g., 6 Hen. 8 c. 13, §1 (1514); 25 Hen. 8 c. 17, §1 (1533); 33 Hen. 8 c. 6 (1541); Prohibiting Use of Handguns and Crossbows (Jan. 1537), in 1 Tudor Royal Proclamations 249 (P. Hughes & J. Larkin eds. 1964). But Henry VIII’s displeasure with handguns arose not primarily from concerns about their safety but rather their inefficacy. Henry VIII worried that handguns threatened Englishmen’s proficiency with the longbow—a weapon many believed was crucial to English military victories in the 1300s and 1400s, including the legendary English victories at Crécy and Agincourt. See R. Payne-Gallwey, *The Crossbow* 32, 34 (1903); L. Schwoerer, *Gun Culture in Early Modern England* 54 (2016) (Schwoerer).

Similarly, James I considered small handguns—called dags—“utterly unserviceable for defence, Militarie practise, or other lawful use.” A Proclamation Against Steelelets,

34 NEW YORK STATE RIFLE & PISTOL ASSN., INC. v. BRUEN

Opinion of the Court

Pocket Daggers, Pocket Dagges and Pistols (R. Barker printer 1616). But, in any event, James I's proclamation in 1616 "was the last one regarding civilians carrying dags," Schworer 63. "After this the question faded without explanation." *Ibid.* So, by the time Englishmen began to arrive in America in the early 1600s, the public carry of handguns was no longer widely proscribed.

When we look to the latter half of the 17th century, respondents' case only weakens. As in *Heller*, we consider this history "[b]etween the [Stuart] Restoration [in 1660] and the Glorious Revolution [in 1688]" to be particularly instructive. 554 U. S., at 592. During that time, the Stuart Kings Charles II and James II ramped up efforts to disarm their political opponents, an experience that "caused Englishmen . . . to be jealous of their arms." *Id.*, at 593.

In one notable example, the government charged Sir John Knight, a prominent detractor of James II, with violating the Statute of Northampton because he allegedly "did walk about the streets armed with guns, and that he went into the church of St. Michael, in Bristol, in the time of divine service, with a gun, to terrify the King's subjects." *Sir John Knight's Case*, 3 Mod. 117, 87 Eng. Rep. 75, 76 (K. B. 1686). Chief Justice Holt explained that the Statute of Northampton had "almost gone in *desuetudinem*," *Rex v. Sir John Knight*, 1 Comb. 38, 38–39, 90 Eng. Rep. 330 (K. B. 1686), meaning that the Statute had largely become obsolete through disuse.¹⁰ And the Chief Justice further explained

¹⁰ Another medieval firearm restriction—a 1541 statute enacted under Henry VIII that limited the ownership and use of handguns (which could not be shorter than a yard) to those subjects with annual property values of at least £100, see 33 Hen. 8 c. 6, §§1–2—fell into a similar obsolescence. As far as we can discern, the last recorded prosecutions under the 1541 statute occurred in 1693, neither of which appears to have been successful. See *King and Queen v. Bullock*, 4 Mod. 147, 87 Eng. Rep. 315 (K. B. 1693); *King v. Litten*, 1 Shower, K. B. 367, 89 Eng. Rep. 644 (K. B. 1693). It seems that other prosecutions under the 1541 statute during the late 1600s were similarly unsuccessful. See *King v. Silcot*, 3 Mod. 280, 280–

Opinion of the Court

that the act of “go[ing] armed *to terrify* the King’s subjects” was “a great offence at the *common law*” and that the Statute of Northampton “is but an affirmance of that law.” 3 Mod., at 118, 87 Eng. Rep., at 76 (first emphasis added). Thus, one’s conduct “will come within the Act,”—*i.e.*, would terrify the King’s subjects—only “where the crime shall appear to be *malo animo*,” 1 Comb., at 39, 90 Eng. Rep., at 330, with evil intent or malice. Knight was ultimately acquitted by the jury.¹¹

281, 87 Eng. Rep. 186 (K. B. 1690); *King v. Lewellin*, 1 Shower, K. B. 48, 89 Eng. Rep. 440 (K. B. 1689); cf. *King and Queen v. Alsop*, 4 Mod. 49, 50–51, 87 Eng. Rep. 256, 256–257 (K. B. 1691). By the late 1700s, it was widely recognized that the 1541 statute was “obsolete.” 2 R. Burn, *The Justice of the Peace, and Parish Officer* 243, n. (11th ed. 1769); see also, *e.g.*, *The Farmer’s Lawyer* 143 (1774) (“entirely obsolete”); 1 G. Jacob, *Game-Laws II*, *Law-Dictionary* (T. Tomlins ed. 1797); 2 R. Burn, *The Justice of the Peace, and Parish Officer* 409 (18th ed. 1797) (calling the 1541 statute “a matter more of curiosity than use”).

In any event, lest one be tempted to put much evidentiary weight on the 1541 statute, it impeded not only public carry, but further made it unlawful for those without sufficient means to “kepe in his or their houses” any “handgun.” 33 Hen. 8 c. 6, §1. Of course, this kind of limitation is inconsistent with *Heller’s* historical analysis regarding the Second Amendment’s meaning at the founding and thereafter. So, even if a severe restriction on keeping firearms in the home may have seemed appropriate in the mid-1500s, it was not incorporated into the Second Amendment’s scope. We see little reason why the parts of the 1541 statute that address public carry should not be understood similarly.

We note also that even this otherwise restrictive 1541 statute, which generally prohibited shooting firearms in any city, exempted discharges “for the defence of [one’s] p[er]son or house.” §4. Apparently, the paramount need for self-defense trumped the Crown’s interest in firearm suppression even during the 16th century.

¹¹The dissent discounts *Sir John Knight’s Case*, 3 Mod. 117, 87 Eng. Rep. 75, because it only “arguably” supports the view that an evil-intent requirement attached to the Statute of Northampton by the late 1600s and early 1700s. See *post*, at 37. But again, because the Second Amendment’s bare text covers petitioners’ public carry, the respondents here shoulder the burden of demonstrating that New York’s proper-cause requirement is consistent with the Second Amendment’s text and historical scope. See *supra*, at 15. To the extent there are multiple plausible

Opinion of the Court

Just three years later, Parliament responded by writing the “predecessor to our Second Amendment” into the 1689 English Bill of Rights, *Heller*, 554 U. S., at 593, guaranteeing that “Protestants . . . may have Arms for their Defence suitable to their Conditions, and as allowed by Law,” 1 Wm. & Mary c. 2, §7, in 3 Eng. Stat. at Large 417 (1689). Although this right was initially limited—it was restricted to Protestants and held only against the Crown, but not Parliament—it represented a watershed in English history. Englishmen had “never before claimed . . . the right of the individual to arms.” *Schworer* 156.¹² And as that individual right matured, “by the time of the founding,” the right to keep and bear arms was “understood to be an individual right protecting against both public and private violence.” *Heller*, 554 U. S., at 594.

To be sure, the Statute of Northampton survived both *Sir John Knight’s Case* and the English Bill of Rights, but it was no obstacle to public carry for self-defense in the decades leading to the founding. Serjeant William Hawkins, in his widely read 1716 treatise, confirmed that “no wearing of Arms is within the meaning of [the Statute of Northampton], unless it be accompanied with such Circumstances as are apt to terrify the People.” 1 Pleas of the Crown 136. To illustrate that proposition, Hawkins noted as an example that “Persons of Quality” were “in no Danger of Offending against this Statute by wearing common Weapons” because, in those circumstances, it would be clear that they

interpretations of *Sir John Knight’s Case*, we will favor the one that is more consistent with the Second Amendment’s command.

¹²Even Catholics, who fell beyond the protection of the right to have arms, and who were stripped of all “Arms, Weapons, Gunpowder, [and] Ammunition,” were at least allowed to keep “such necessary Weapons as shall be allowed . . . by Order of the Justices of the Peace . . . for the Defence of his House or Person.” 1 Wm. & Mary c. 15, §4, in 3 Eng. Stat. at Large 399 (1688).

Opinion of the Court

had no “Intention to commit any Act of Violence or Disturbance of the Peace.” *Ibid.*; see also T. Barlow, *The Justice of Peace* 12 (1745). Respondents do not offer any evidence showing that, in the early 18th century or after, the mere public carrying of a handgun would terrify people. In fact, the opposite seems to have been true. As time went on, “domestic gun culture [in England] softened” any “terror” that firearms might once have conveyed. *Schworer* 4. Thus, whatever place handguns had in English society during the Tudor and Stuart reigns, by the time we reach the 18th century—and near the founding—they had gained a fairly secure footing in English culture.

At the very least, we cannot conclude from this historical record that, by the time of the founding, English law would have justified restricting the right to publicly bear arms suited for self-defense only to those who demonstrate some special need for self-protection.

2

Respondents next point us to the history of the Colonies and early Republic, but there is little evidence of an early American practice of regulating public carry by the general public. This should come as no surprise—English subjects founded the Colonies at about the time England had itself begun to eliminate restrictions on the ownership and use of handguns.

In the colonial era, respondents point to only three restrictions on public carry. For starters, we doubt that *three* colonial regulations could suffice to show a tradition of public-carry regulation. In any event, even looking at these laws on their own terms, we are not convinced that they regulated public carry akin to the New York law before us.

Two of the statutes were substantively identical. Colonial Massachusetts and New Hampshire both authorized justices of the peace to arrest “all Affrayers, Rioters, Disturbers, or Breakers of the Peace, and such as shall ride or

Opinion of the Court

go armed Offensively . . . by Night or by Day, in Fear or Affray of Their Majesties Liege People.” 1692 Mass. Acts and Laws no. 6, pp. 11–12; see 1699 N. H. Acts and Laws ch. 1. Respondents and their *amici* contend that being “armed offensively” meant bearing any offensive weapons, including firearms. See Brief for Respondents 33. In particular, respondents’ *amici* argue that “‘offensive’” arms in the 1600s and 1700s were what Blackstone and others referred to as “‘dangerous or unusual weapons,’” Brief for Professors of History and Law as *Amici Curiae* 7 (quoting 4 Blackstone, Commentaries, at 148–149), a category that they say included firearms, see also *post*, at 40–42 (BREYER, J., dissenting).

Respondents, their *amici*, and the dissent all misunderstand these statutes. Far from banning the carrying of any class of firearms, they merely codified the existing common-law offense of bearing arms to terrorize the people, as had the Statute of Northampton itself. See *supra*, at 34–37. For instance, the Massachusetts statute proscribed “go[ing] armed Offensively . . . in Fear or Affray” of the people, indicating that these laws were modeled after the Statute of Northampton to the extent that the statute would have been understood to limit public carry *in the late 1600s*. Moreover, it makes very little sense to read these statutes as banning the public carry of all firearms just a few years after Chief Justice Holt in *Sir John Knight’s Case* indicated that the English common law did not do so.

Regardless, even if respondents’ reading of these colonial statutes were correct, it would still do little to support restrictions on the public carry of handguns *today*. At most, respondents can show that colonial legislatures sometimes prohibited the carrying of “dangerous and unusual weapons”—a fact we already acknowledged in *Heller*. See 554 U. S., at 627. Drawing from this historical tradition, we explained there that the Second Amendment protects only the carrying of weapons that are those “in common use at the

Opinion of the Court

time,” as opposed to those that “are highly unusual in society at large.” *Ibid.* (internal quotation marks omitted). Whatever the likelihood that handguns were considered “dangerous and unusual” during the colonial period, they are indisputably in “common use” for self-defense today. They are, in fact, “the quintessential self-defense weapon.” *Id.*, at 629. Thus, even if these colonial laws prohibited the carrying of handguns because they were considered “dangerous and unusual weapons” in the 1690s, they provide no justification for laws restricting the public carry of weapons that are unquestionably in common use today.

The third statute invoked by respondents was enacted in East New Jersey in 1686. It prohibited the concealed carry of “pocket pistol[s]” or other “unusual or unlawful weapons,” and it further prohibited “planter[s]” from carrying all pistols unless in military service or, if “strangers,” when traveling through the Province. An Act Against Wearing Swords, &c., ch. 9, in Grants, Concessions, and Original Constitutions of the Province of New Jersey 290 (2d ed. 1881) (Grants and Concessions). These restrictions do not meaningfully support respondents. The law restricted only concealed carry, not all public carry, and its restrictions applied only to certain “unusual or unlawful weapons,” including “pocket pistol[s].” *Ibid.* It also did not apply to all pistols, let alone all firearms. “Pocket pistols” had barrel lengths of perhaps 3 or 4 inches, far smaller than the 6-inch to 14-inch barrels found on the other belt and hip pistols that were commonly used for lawful purposes in the 1600s. J. George, English Pistols and Revolvers 16 (1938); see also, e.g., 14 Car. 2 c. 3, §20 (1662); H. Peterson, Arms and Armor in Colonial America, 1526–1783, p. 208 (1956) (Peterson). Moreover, the law prohibited only the *concealed* carry of pocket pistols; it presumably did not by its terms touch the

Opinion of the Court

open carry of larger, presumably more common pistols, except as to “planters.”¹³ In colonial times, a “planter” was simply a farmer or plantation owner who settled new territory. R. Lederer, *Colonial American English* 175 (1985); New Jersey State Archives, J. Klett, *Using the Records of the East and West Jersey Proprietors* 31 (rev. ed. 2014), <https://www.nj.gov/state/archives/pdf/proprietors.pdf>. While the reason behind this singular restriction is not entirely clear, planters may have been targeted because colonial-era East New Jersey was riven with “strife and excitement” between planters and the Colony’s proprietors “respecting titles to the soil.” See W. Whitehead, *East Jersey Under the Proprietary Governments* 150–151 (rev. 2d ed. 1875); see also T. Gordon, *The History of New Jersey* 49 (1834).

In any event, we cannot put meaningful weight on this solitary statute. First, although the “planter” restriction may have prohibited the public carry of pistols, it did not prohibit planters from carrying long guns for self-defense—including the popular musket and carbine. See Peterson 41. Second, it does not appear that the statute survived for very long. By 1694, East New Jersey provided that no slave “be permitted to carry any gun or pistol . . . into the woods, or plantations” unless their owner accompanied them. *Grants and Concessions* 341. If slave-owning planters were prohibited from carrying pistols, it is hard to comprehend why slaves would have been able to carry them in the planter’s presence. Moreover, there is no evidence that the 1686 statute survived the 1702 merger of East and West New Jersey. See 1 Nevill, *Acts of the General Assembly of the Province of New-Jersey* (1752). At most eight years of

¹³Even assuming that pocket pistols were, as East Jersey in 1686 deemed them, “unusual or unlawful,” it appears that they were commonly used at least by the founding. See, e.g., G. Neumann, *The History of Weapons of the American Revolution* 150–151 (1967); see also H. Hendrick, P. Paradis, & R. Hornick, *Human Factors Issues in Handgun Safety and Forensics* 44 (2008).

Opinion of the Court

history in half a Colony roughly a century before the founding sheds little light on how to properly interpret the Second Amendment.

Respondents next direct our attention to three late-18th-century and early-19th-century statutes, but each parallels the colonial statutes already discussed. One 1786 Virginia statute provided that “no man, great nor small, [shall] go nor ride armed by night nor by day, in fairs or markets, or in other places, in terror of the Country.” *Collection of All Such Acts of the General Assembly of Virginia* ch. 21, p. 33 (1794).¹⁴ A Massachusetts statute from 1795 commanded justices of the peace to arrest “all affrayers, rioters, disturbers, or breakers of the peace, and such as shall ride or go armed offensively, to the fear or terror of the good citizens of this Commonwealth.” 1795 Mass. Acts and Laws ch. 2, p. 436, in *Laws of the Commonwealth of Massachusetts*. And an 1801 Tennessee statute likewise required any person who would “publicly ride or go armed to the terror of the people, or privately carry any dirk, large knife, pistol or any other dangerous weapon, to the fear or terror of any person” to post a surety; otherwise, his continued violation of the law would be “punished as for a breach of the peace, or riot at common law.” 1801 Tenn. Acts pp. 260–261.

A by-now-familiar thread runs through these three statutes: They prohibit bearing arms in a way that spreads “fear” or “terror” among the people. As we have already explained, Chief Justice Holt in *Sir John Knight’s Case* interpreted this *in Terrorem Populi* element to require something more than merely carrying a firearm in public. See *supra*, at 34–35. Respondents give us no reason to think that the founding generation held a different view. Thus, all told, in the century leading up to the Second Amendment

¹⁴The Virginia statute all but codified the existing common law in this regard. See G. Webb, *The Office and Authority of a Justice of Peace* 92 (1736) (explaining how a constable “may take away Arms from such who ride, or go, offensively armed, in Terror of the People”).

42 NEW YORK STATE RIFLE & PISTOL ASSN., INC. v. BRUEN

Opinion of the Court

and in the first decade after its adoption, there is no historical basis for concluding that the pre-existing right enshrined in the Second Amendment permitted broad prohibitions on all forms of public carry.

3

Only after the ratification of the Second Amendment in 1791 did public-carry restrictions proliferate. Respondents rely heavily on these restrictions, which generally fell into three categories: common-law offenses, statutory prohibitions, and “surety” statutes. None of these restrictions imposed a substantial burden on public carry analogous to the burden created by New York’s restrictive licensing regime.

Common-Law Offenses. As during the colonial and founding periods, the common-law offenses of “affray” or going armed “to the terror of the people” continued to impose some limits on firearm carry in the antebellum period. But as with the earlier periods, there is no evidence indicating that these common-law limitations impaired the right of the general population to peaceable public carry.

For example, the Tennessee attorney general once charged a defendant with the common-law offense of affray, arguing that the man committed the crime when he “‘arm[ed] himself with dangerous and unusual weapons, in such a manner as will naturally cause terror to the people.’” *Simpson v. State*, 13 Tenn. 356, 358 (1833). More specifically, the indictment charged that Simpson “with force and arms being arrayed in a warlike manner . . . unlawfully, and to the great terror and disturbance of divers good citizens, did make an affray.” *Id.*, at 361. The Tennessee Supreme Court quashed the indictment, holding that the Statute of Northampton was never part of Tennessee law. *Id.*, at 359. But even assuming that Tennesseans’ ancestors brought with them the common law associated with the Statute, the *Simpson* court found that if the Statute had

Opinion of the Court

made, as an “independent ground of affray,” the mere arming of oneself with firearms, the Tennessee Constitution’s Second Amendment analogue had “completely abrogated it.” *Id.*, at 360. At least in light of that constitutional guarantee, the court did not think that it could attribute to the mere carrying of arms “a necessarily consequent operation as terror to the people.” *Ibid.*

Perhaps more telling was the North Carolina Supreme Court’s decision in *State v. Huntly*, 25 N. C. 418 (1843) (*per curiam*). Unlike the Tennessee Supreme Court in *Simpson*, the *Huntly* court held that the common-law offense codified by the Statute of Northampton was part of the State’s law. See 25 N. C., at 421–422. However, consistent with the Statute’s long-settled interpretation, the North Carolina Supreme Court acknowledged “that the carrying of a gun” for a lawful purpose “*per se* constitutes no offence.” *Id.*, at 422–423. Only carrying for a “wicked purpose” with a “mischievous result . . . constitute[d a] crime.” *Id.*, at 423; see also J. Haywood, *The Duty and Office of Justices of Peace* 10 (1800); H. Potter, *The Office and Duties of a Justice of the Peace* 39 (1816).¹⁵ Other state courts likewise recognized that the common law did not punish the carrying of

¹⁵The dissent concedes that *Huntly*, 25 N. C. 418, recognized that citizens were “‘at perfect liberty’ to carry for ‘lawful purpose[s].’” *Post*, at 42 (quoting *Huntly*, 25 N. C., at 423). But the dissent disputes that such “lawful purpose[s]” included self-defense, because *Huntly* goes on to speak more specifically of carrying arms for “business or amusement.” *Id.*, at 422–423. This is an unduly stingy interpretation of *Huntly*. In particular, *Huntly* stated that “the citizen is at perfect liberty to carry his gun” “[f]or any lawful purpose,” of which “business” and “amusement” were then mentioned. *Ibid.* (emphasis added). *Huntly* then contrasted these “lawful purpose[s]” with the “wicked purpose . . . to terrify and alarm.” *Ibid.* Because there is no evidence that *Huntly* considered self-defense a “wicked purpose,” we think the best reading of *Huntly* would sanction public carry for self-defense, so long as it was not “in such [a] manner as naturally will terrify and alarm.” *Id.*, at 423.

Opinion of the Court

deadly weapons *per se*, but only the carrying of such weapons “for the purpose of an affray, and in such manner as to strike terror to the people.” *O’Neil v. State*, 16 Ala. 65, 67 (1849). Therefore, those who sought to carry firearms publicly and peaceably in antebellum America were generally free to do so.

Statutory Prohibitions. In the early to mid-19th century, some States began enacting laws that proscribed the concealed carry of pistols and other small weapons. As we recognized in *Heller*, “the majority of the 19th-century courts to consider the question held that [these] prohibitions on carrying concealed weapons were lawful under the Second Amendment or state analogues.” 554 U. S., at 626. Respondents unsurprisingly cite these statutes¹⁶—and decisions upholding them¹⁷—as evidence that States were historically free to ban public carry.

In fact, however, the history reveals a consensus that States could *not* ban public carry altogether. Respondents’

¹⁶Beginning in 1813 with Kentucky, six States (five of which were in the South) enacted laws prohibiting the concealed carry of pistols by 1846. See 1813 Ky. Acts §1, p. 100; 1813 La. Acts p. 172; 1820 Ind. Acts p. 39; Ark. Rev. Stat. §13, p. 280 (1838); 1838 Va. Acts ch. 101, §1, p. 76; 1839 Ala. Acts no. 77, §1. During this period, Georgia enacted a law that appeared to prohibit both concealed and open carry, see 1837 Ga. Acts §§1, 4, p. 90, but the Georgia Supreme Court later held that the prohibition could not extend to open carry consistent with the Second Amendment. See *infra*, at 45–46. Between 1846 and 1859, only one other State, Ohio, joined this group. 1859 Ohio Laws §1, p. 56. Tennessee, meanwhile, enacted in 1821 a broader law that prohibited carrying, among other things, “belt or pocket pistols, either public or private,” except while traveling. 1821 Tenn. Acts ch. 13, §1, p. 15. And the Territory of Florida prohibited concealed carry during this same timeframe. See 1835 Terr. of Fla. Laws p. 423.

¹⁷See *State v. Mitchell*, 3 Blackf. 229 (Ind. 1833); *State v. Reid*, 1 Ala. 612, 616 (1840); *State v. Buzzard*, 4 Ark. 18 (1842); *Nunn v. State*, 1 Ga. 243 (1846); *State v. Chandler*, 5 La. 489 (1850); *State v. Smith*, 11 La. 633 (1856); *State v. Jumel*, 13 La. 399 (1858). But see *Bliss v. Commonwealth*, 12 Ky. 90 (1822). See generally 2 J. Kent, Commentaries on American Law *340, n. b.

Opinion of the Court

cited opinions agreed that concealed-carry prohibitions were constitutional only if they did not similarly prohibit *open* carry. That was true in Alabama. See *State v. Reid*, 1 Ala. 612, 616, 619–621 (1840).¹⁸ It was also true in Louisiana. See *State v. Chandler*, 5 La. 489, 490 (1850).¹⁹ Kentucky, meanwhile, went one step further—the State Supreme Court *invalidated* a concealed-carry prohibition. See *Bliss v. Commonwealth*, 12 Ky. 90 (1822).²⁰

The Georgia Supreme Court’s decision in *Nunn v. State*, 1 Ga. 243 (1846), is particularly instructive. Georgia’s 1837 statute broadly prohibited “wearing” or “carrying” pistols “as arms of offence or defence,” without distinguishing between concealed and open carry. 1837 Ga. Acts 90, §1. To the extent the 1837 Act prohibited “carrying certain weapons *secretly*,” the court explained, it was “valid.” *Nunn*, 1

¹⁸ See *Reid*, 1 Ala., at 619 (holding that “the Legislature cannot inhibit the citizen from bearing arms openly”); *id.*, at 621 (noting that there was no evidence “tending to show that the defendant could not have defended himself as successfully, by carrying the pistol openly, as by secreting it about his person”).

¹⁹ See, e.g., *Chandler*, 5 La., at 490 (Louisiana concealed-carry prohibition “interfered with no man’s right to carry arms (to use its words) ‘in full open view,’ which places men upon an equality”); *Smith*, 11 La., at 633 (The “arms” described in the Second Amendment “are such as are borne by a people in war, or at least carried openly”); *Jumel*, 13 La., at 399–400 (“The statute in question does not infringe the right of the people to keep or bear arms. It is a measure of police, prohibiting only a *particular mode* of bearing arms which is found dangerous to the peace of society”).

²⁰ With respect to Indiana’s concealed-carry prohibition, the Indiana Supreme Court’s reasons for upholding it are unknown because the court issued a one-sentence *per curiam* order holding the law “not unconstitutional.” *Mitchell*, 3 Blackf., at 229. Similarly, the Arkansas Supreme Court upheld Arkansas’ prohibition, but without reaching a majority rationale. See *Buzzard*, 4 Ark. 18. The Arkansas Supreme Court would later adopt Tennessee’s approach, which tolerated the prohibition of all public carry of handguns except for military-style revolvers. See, e.g., *Fife v. State*, 31 Ark. 455 (1876).

Opinion of the Court

Ga., at 251. But to the extent the Act also prohibited “bearing arms *openly*,” the court went on, it was “in conflict with the Constitutio[n] and *void*.” *Ibid.*; see also *Heller*, 554 U. S., at 612. The Georgia Supreme Court’s treatment of the State’s general prohibition on the public carriage of handguns indicates that it was considered beyond the constitutional pale in antebellum America to altogether prohibit public carry.

Finally, we agree that Tennessee’s prohibition on carrying “publicly or privately” any “belt or pocket pisto[ll],” 1821 Tenn. Acts ch. 13, p. 15, was, on its face, uniquely severe, see *Heller*, 554 U. S., at 629. That said, when the Tennessee Supreme Court addressed the constitutionality of a substantively identical successor provision, see 1870 Tenn. Acts ch. 13, §1, p. 28, the court read this language to permit the public carry of larger, military-style pistols because any categorical prohibition on their carry would “violat[e] the constitutional right to keep arms.” *Andrews v. State*, 50 Tenn. 165, 187 (1871); see also *Heller*, 554 U. S., at 629 (discussing *Andrews*).²¹

All told, these antebellum state-court decisions evince a consensus view that States could not altogether prohibit the public carry of “arms” protected by the Second Amendment or state analogues.²²

²¹ Shortly after *Andrews*, 50 Tenn. 165, Tennessee codified an exception to the State’s handgun ban for “an[y] army pistol, or such as are commonly carried and used in the United States Army” so long as they were carried “openly in [one’s] hands.” 1871 Tenn. Pub. Acts ch. 90, §1; see also *State v. Wilburn*, 66 Tenn. 57, 61–63 (1872); *Porter v. State*, 66 Tenn. 106, 107–108 (1874).

²² The Territory of New Mexico made it a crime in 1860 to carry “any class of pistols whatever” “concealed or otherwise.” 1860 Terr. of N. M. Laws §§1–2, p. 94. This extreme restriction is an outlier statute enacted by a territorial government nearly 70 years after the ratification of the Bill of Rights, and its constitutionality was never tested in court. Its value in discerning the original meaning of the Second Amendment is insubstantial. Moreover, like many other stringent carry restrictions

Opinion of the Court

Surety Statutes. In the mid-19th century, many jurisdictions began adopting surety statutes that required certain individuals to post bond before carrying weapons in public. Although respondents seize on these laws to justify the proper-cause restriction, their reliance on them is misplaced. These laws were not *bans* on public carry, and they typically targeted only those threatening to do harm.

As discussed earlier, Massachusetts had prohibited riding or going “armed offensively, to the fear or terror of the good citizens of this Commonwealth” since 1795. 1795 Mass. Acts and Laws ch. 2, at 436, in *Laws of the Commonwealth of Massachusetts*. In 1836, Massachusetts enacted a new law providing:

“If any person shall go armed with a dirk, dagger, sword, pistol, or other offensive and dangerous weapon, without reasonable cause to fear an assault or other injury, or violence to his person, or to his family or property, he may, on complaint of any person having reasonable cause to fear an injury, or breach of the peace, be required to find sureties for keeping the peace, for a term not exceeding six months, with the right of appealing as before provided.” Mass. Rev. Stat., ch. 134, §16.

In short, the Commonwealth required any person who was reasonably likely to “breach the peace,” and who, standing accused, could not prove a special need for self-defense, to post a bond before publicly carrying a firearm. Between 1838 and 1871, nine other jurisdictions adopted variants of

that were localized in the Western Territories, New Mexico’s prohibition ended when the Territory entered the Union as a State in 1911 and guaranteed in its State Constitution that “[t]he people have the right to bear arms for their security and defense, but nothing herein shall be held to permit the carrying of concealed weapons.” N. M. Const., Art. II, §6 (1911); see *infra*, at 61.

48 NEW YORK STATE RIFLE & PISTOL ASSN., INC. v. BRUEN

Opinion of the Court

the Massachusetts law.²³

Contrary to respondents’ position, these “reasonable-cause laws” in no way represented the “direct precursor” to the proper-cause requirement. Brief for Respondents 27. While New York presumes that individuals have *no* public carry right without a showing of heightened need, the surety statutes *presumed* that individuals had a right to public carry that could be burdened only if another could make out a specific showing of “reasonable cause to fear an injury, or breach of the peace.” Mass. Rev. Stat., ch. 134, §16 (1836).²⁴ As William Rawle explained in an influential treatise, an individual’s carrying of arms was “sufficient cause to require him to give surety of the peace” only when “attended with circumstances giving just reason to fear that he purposes to make an unlawful use of them.” A View of the Constitution of the United States of America 126 (2d ed. 1829). Then, even on such a showing, the surety laws did not *prohibit* public carry in locations frequented by the general community. Rather, an accused arms-bearer “could go on carrying without criminal penalty” so long as he “post[ed] money that would be forfeited if he breached the peace or injured others—a requirement from which he was exempt if *he* needed self-defense.” *Wrenn*, 864 F. 3d, at 661.

Thus, unlike New York’s regime, a showing of special need was required only *after* an individual was reasonably accused of intending to injure another or breach the peace. And, even then, proving special need simply avoided a fee rather than a ban. All told, therefore, “[u]nder surety laws

²³ See 1838 Terr. of Wis. Stat. §16, p. 381; Me. Rev. Stat., ch. 169, §16 (1840); Mich. Rev. Stat., ch. 162, §16 (1846); 1847 Va. Acts ch. 14, §16; Terr. of Minn. Rev. Stat., ch. 112, §18 (1851); 1854 Ore. Stat. ch. 16, §17, p. 220; D. C. Rev. Code ch. 141, §16 (1857); 1860 Pa. Laws p. 432, §6; W. Va. Code, ch. 153, §8 (1868).

²⁴ It is true that two of the antebellum surety laws were unusually broad in that they did not expressly require a citizen complaint to trigger the posting of a surety. See 1847 Va. Acts ch. 14, §16; W. Va. Code, ch. 153, §8 (1868).

Opinion of the Court

... everyone started out with robust carrying rights” and only those reasonably accused were required to show a special need in order to avoid posting a bond. *Ibid.* These antebellum special-need requirements “did not expand carrying for the responsible; it shrank burdens on carrying by the (allegedly) reckless.” *Ibid.*

One Court of Appeals has nonetheless remarked that these surety laws were “a severe constraint on anyone thinking of carrying a weapon in public.” *Young*, 992 F. 3d, at 820. That contention has little support in the historical record. Respondents cite no evidence showing the average size of surety postings. And given that surety laws were “intended merely for prevention” and were “not meant as any degree of punishment,” 4 Blackstone, Commentaries, at 249, the burden these surety statutes may have had on the right to public carry was likely too insignificant to shed light on New York’s proper-cause standard—a violation of which can carry a 4-year prison term or a \$5,000 fine. In *Heller*, we noted that founding-era laws punishing unlawful discharge “with a small fine and forfeiture of the weapon . . . , not with significant criminal penalties,” likely did not “preven[t] a person in the founding era from using a gun to protect himself or his family from violence, or that if he did so the law would be enforced against him.” 554 U. S., at 633–634. Similarly, we have little reason to think that the hypothetical possibility of posting a bond would have prevented anyone from carrying a firearm for self-defense in the 19th century.

Besides, respondents offer little evidence that authorities ever enforced surety laws. The only recorded case that we know of involved a justice of the peace *declining* to require a surety, even when the complainant alleged that the arms-bearer “‘did threaten to beat, wou[n]d, mai[m], and kill” him. Brief for Professor Robert Leider et al. as *Amici Curiae* 31 (quoting *Grover v. Bullock*, No. 185 (Worcester Cty.,

Opinion of the Court

Aug. 13, 1853)); see E. Ruben & S. Cornell, Firearm Regionalism and Public Carry: Placing Southern Antebellum Case Law in Context, 125 Yale L. J. Forum 121, 130, n. 53 (2015). And one scholar who canvassed 19th-century newspapers—which routinely reported on local judicial matters—found only a handful of other examples in Massachusetts and the District of Columbia, all involving black defendants who may have been targeted for selective or pretextual enforcement. See R. Leider, Constitutional Liquidation, Surety Laws, and the Right To Bear Arms 15–17, in *New Histories of Gun Rights and Regulation* (J. Blocher, J. Charles, & D. Miller eds.) (forthcoming); see also Brief for Professor Robert Leider et al. as *Amici Curiae* 31–32. That is surely too slender a reed on which to hang a historical tradition of restricting the right to public carry.²⁵

Respondents also argue that surety statutes were severe restrictions on firearms because the “reasonable cause to fear” standard was essentially *pro forma*, given that “merely carrying firearms in populous areas breached the peace” *per se*. Brief for Respondents 27. But that is a counterintuitive reading of the language that the surety statutes actually used. If the mere carrying of handguns breached the peace, it would be odd to draft a surety statute requiring a complainant to demonstrate “reasonable cause to fear an injury, or breach of the peace,” Mass. Rev. Stat., ch. 134, §16, rather than a reasonable likelihood that the arms-bearer carried a covered weapon. After all, if it was the nature of the weapon rather than the manner of carry that

²⁵The dissent speculates that the absence of recorded cases involving surety laws may simply “show that these laws were normally followed.” *Post*, at 45. Perhaps. But again, the burden rests with the government to establish the relevant tradition of regulation, see *supra*, at 15, and, given all of the other features of surety laws that make them poor analogues to New York’s proper-cause standard, we consider the barren record of enforcement to be simply one additional reason to discount their relevance.

Cite as: 597 U. S. ____ (2022)

51

Opinion of the Court

was dispositive, then the “reasonable fear” requirement would be redundant.

Moreover, the overlapping scope of surety statutes and criminal statutes suggests that the former were not viewed as substantial restrictions on public carry. For example, when Massachusetts enacted its surety statute in 1836, it reaffirmed its 1794 criminal prohibition on “go[ing] armed offensively, to the terror of the people.” Mass. Rev. Stat., ch. 85, §24. And Massachusetts continued to criminalize the carrying of various “dangerous weapons” well after passing the 1836 surety statute. See, e.g., 1850 Mass. Acts ch. 194, §1, p. 401; Mass. Gen. Stat., ch. 164, §10 (1860). Similarly, Virginia had criminalized the concealed carry of pistols since 1838, see 1838 Va. Acts ch. 101, §1, nearly a decade before it enacted its surety statute, see 1847 Va. Acts ch. 14, §16. It is unlikely that these surety statutes constituted a “severe” restraint on public carry, let alone a restriction tantamount to a ban, when they were supplemented by direct criminal prohibitions on specific weapons and methods of carry.

To summarize: The historical evidence from antebellum America does demonstrate that *the manner* of public carry was subject to reasonable regulation. Under the common law, individuals could not carry deadly weapons in a manner likely to terrorize others. Similarly, although surety statutes did not directly restrict public carry, they did provide financial incentives for responsible arms carrying. Finally, States could lawfully eliminate one kind of public carry—concealed carry—so long as they left open the option to carry openly.

None of these historical limitations on the right to bear arms approach New York’s proper-cause requirement because none operated to prevent law-abiding citizens with ordinary self-defense needs from carrying arms in public for that purpose.

52 NEW YORK STATE RIFLE & PISTOL ASSN., INC. v. BRUEN

Opinion of the Court

4

Evidence from around the adoption of the Fourteenth Amendment also fails to support respondents' position. For the most part, respondents and the United States ignore the "outpouring of discussion of the [right to keep and bear arms] in Congress and in public discourse, as people debated whether and how to secure constitutional rights for newly free slaves" after the Civil War. *Heller*, 554 U. S., at 614. Of course, we are not obliged to sift the historical materials for evidence to sustain New York's statute. That is respondents' burden. Nevertheless, we think a short review of the public discourse surrounding Reconstruction is useful in demonstrating how public carry for self-defense remained a central component of the protection that the Fourteenth Amendment secured for all citizens.

A short prologue is in order. Even before the Civil War commenced in 1861, this Court indirectly affirmed the importance of the right to keep and bear arms in public. Writing for the Court in *Dred Scott v. Sandford*, 19 How. 393 (1857), Chief Justice Taney offered what he thought was a parade of horrors that would result from recognizing that free blacks were citizens of the United States. If blacks were citizens, Taney fretted, they would be entitled to the privileges and immunities of citizens, including the right "to keep and carry arms *wherever they went*." *Id.*, at 417 (emphasis added). Thus, even Chief Justice Taney recognized (albeit unenthusiastically in the case of blacks) that public carry was a component of the right to keep and bear arms—a right free blacks were often denied in antebellum America.

After the Civil War, of course, the exercise of this fundamental right by freed slaves was systematically thwarted. This Court has already recounted some of the Southern abuses violating blacks' right to keep and bear arms. See *McDonald*, 561 U. S., at 771 (noting the "systematic efforts"

Opinion of the Court

made to disarm blacks); *id.*, at 845–847 (THOMAS, J., concurring in part and concurring in judgment); see also S. Exec. Doc. No. 43, 39th Cong., 1st Sess., 8 (1866) (“Pistols, old muskets, and shotguns were taken away from [freed slaves] as such weapons would be wrested from the hands of lunatics”).

In the years before the 39th Congress proposed the Fourteenth Amendment, the Freedmen’s Bureau regularly kept it abreast of the dangers to blacks and Union men in the postbellum South. The reports described how blacks used publicly carried weapons to defend themselves and their communities. For example, the Bureau reported that a teacher from a Freedmen’s school in Maryland had written to say that, because of attacks on the school, “[b]oth the mayor and sheriff have warned the colored people to go armed to school, (which they do,)” and that the “[t]he superintendent of schools came down and brought [the teacher] a revolver” for his protection. Cong. Globe, 39th Cong., 1st Sess., 658 (1866); see also H. R. Exec. Doc. No. 68, 39th Cong., 2d Sess., 91 (1867) (noting how, during the New Orleans riots, blacks under attack “defended themselves . . . with such pistols as they had”).

Witnesses before the Joint Committee on Reconstruction also described the depredations visited on Southern blacks, and the efforts they made to defend themselves. One Virginia music professor related that when “[t]wo Union men were attacked . . . they drew their revolvers and held their assailants at bay.” H. R. Rep. No. 30, 39th Cong., 1st Sess., pt. 2, p. 110 (1866). An assistant commissioner to the Bureau from Alabama similarly reported that men were “robbing and disarming negroes upon the highway,” H. R. Exec. Doc. No. 70, 39th Cong., 1st Sess., 297 (1866), indicating that blacks indeed carried arms publicly for their self-protection, even if not always with success. See also H. R. Exec. Doc. No. 329, 40th Cong., 2d Sess., 41 (1868) (describing a Ku Klux Klan outfit that rode “through the country

54 NEW YORK STATE RIFLE & PISTOL ASSN., INC. *v.* BRUEN

Opinion of the Court

. . . robbing every one they come across of money, pistols, papers, &c.”); *id.*, at 36 (noting how a black man in Tennessee had been murdered on his way to get book subscriptions, with the murderer taking, among other things, the man’s pistol).

Blacks had “procured great numbers of old army muskets and revolvers, particularly in Texas,” and “employed them to protect themselves” with “vigor and audacity.” S. Exec. Doc. No. 43, 39th Cong., 1st Sess., at 8. Seeing that government was inadequately protecting them, “there [was] the strongest desire on the part of the freedmen to secure arms, revolvers particularly.” H. R. Rep. No. 30, 39th Cong., 1st Sess., pt. 3, at 102.

On July 6, 1868, Congress extended the 1866 Freedmen’s Bureau Act, see 15 Stat. 83, and reaffirmed that freedmen were entitled to the “full and equal benefit of all laws and proceedings concerning personal liberty [and] personal security . . . *including the constitutional right to keep and bear arms.*” §14, 14 Stat. 176 (1866) (emphasis added). That same day, a Bureau official reported that freedmen in Kentucky and Tennessee were still constantly under threat: “No Union man or negro who attempts to take any active part in politics, or the improvement of his race, is safe a single day; and nearly all sleep upon their arms at night, and carry concealed weapons during the day.” H. R. Exec. Doc. No. 329, 40th Cong., 2d Sess., at 40.

Of course, even during Reconstruction the right to keep and bear arms had limits. But those limits were consistent with a right of the public to peaceably carry handguns for self-defense. For instance, when General D. E. Sickles issued a decree in 1866 pre-empting South Carolina’s Black Codes—which prohibited firearm possession by blacks—he stated: “The constitutional rights of all loyal and well-disposed inhabitants to bear arms will not be infringed; nevertheless this shall not be construed to sanction the unlawful practice of carrying concealed weapons. . . . And no

Opinion of the Court

disorderly person, vagrant, or disturber of the peace, shall be allowed to bear arms.” Cong. Globe, 39th Cong., 1st Sess., at 908–909; see also *McDonald*, 561 U. S., at 847–848 (opinion of THOMAS, J.).²⁶ Around the same time, the editors of *The Loyal Georgian*, a prominent black-owned newspaper, were asked by “A Colored Citizen” whether “colored persons [have] a right to own and carry fire arms.” The editors responded that blacks had “the *same* right to own and carry fire arms that *other* citizens have.” *The Loyal Georgian*, Feb. 3, 1866, p. 3, col. 4. And, borrowing language from a Freedmen’s Bureau circular, the editors maintained that “[a]ny person, white or black, may be disarmed if convicted of making an improper or dangerous use of weapons,” even though “no military or civil officer has the right or authority to disarm any class of people, thereby placing them at the mercy of others.” *Ibid.* (quoting Circular No. 5, Freedmen’s Bureau, Dec. 22, 1865); see also *McDonald*, 561 U. S., at 848–849 (opinion of THOMAS, J.).²⁷

²⁶ Respondents invoke General Orders No. 10, which covered the Second Military District (North and South Carolina), and provided that “[t]he practice of carrying deadly weapons, except by officers and soldiers in the military service of the United States, is prohibited.” Headquarters Second Military Dist., Gen. Orders No. 10 (Charleston, S. C., Apr. 11, 1867), in S. Exec. Doc. No. 14, 40th Cong., 1st Sess., 64 (1867). We put little weight on this categorical restriction given that the order also specified that a violation of this prohibition would “render the offender amenable to trial and punishment by military commission,” *ibid.*, rather than a jury otherwise guaranteed by the Constitution. There is thus little indication that these military dictates were designed to align with the Constitution’s usual application during times of peace.

²⁷ That said, Southern prohibitions on concealed carry were not always applied equally, even when under federal scrutiny. One lieutenant posted in Saint Augustine, Florida, remarked how local enforcement of concealed-carry laws discriminated against blacks: “To sentence a negro to several dollars’ fine for carrying a revolver concealed upon his person, is in accordance with an ordinance of the town; but still the question naturally arises in my mind, ‘Why is this poor fellow fined for an offence which is committed hourly by every other white man I meet in the streets?’” H. R. Exec. Doc. No. 57, 40th Cong., 2d Sess., 83 (1867); see

Opinion of the Court

As for Reconstruction-era state regulations, there was little innovation over the kinds of public-carry restrictions that had been commonplace in the early 19th century. For instance, South Carolina in 1870 authorized the arrest of “all who go armed offensively, to the terror of the people,” 1870 S. C. Acts p. 403, no. 288, §4, parroting earlier statutes that codified the common-law offense. That same year, after it cleaved from Virginia, West Virginia enacted a surety statute nearly identical to the one it inherited from Virginia. See W. Va. Code, ch. 153, §8. Also in 1870, Tennessee essentially reenacted its 1821 prohibition on the public carry of handguns but, as explained above, Tennessee courts interpreted that statute to exempt large pistols suitable for military use. See *supra*, at 46.

Respondents and the United States, however, direct our attention primarily to two late-19th-century cases in Texas. In 1871, Texas law forbade anyone from “carrying on or about his person . . . any pistol . . . unless he has reasonable grounds for fearing an unlawful attack on his person.” 1871 Tex. Gen. Laws §1. The Texas Supreme Court upheld that restriction in *English v. State*, 35 Tex. 473 (1871). The Court reasoned that the Second Amendment, and the State’s constitutional analogue, protected only those arms “as are useful and proper to an armed militia,” including holster pistols, but not other kinds of handguns. *Id.*, at 474–475. Beyond that constitutional holding, the *English* court further opined that the law was not “contrary to public policy,” *id.*, at 479, given that it “ma[de] all necessary exceptions” allowing deadly weapons to “be carried as means of self-defense,” and therefore “fully cover[ed] all wants of society,” *id.*, at 477.

Four years later, in *State v. Duke*, 42 Tex. 455 (1875), the Texas Supreme Court modified its analysis. The court reinterpreted Texas’ State Constitution to protect not only

also H. R. Rep. No. 16, 39th Cong., 2d Sess., 427 (1867).

Cite as: 597 U. S. ____ (2022)

57

Opinion of the Court

military-style weapons but rather all arms “as are commonly kept, according to the customs of the people, and are appropriate for open and manly use in self-defense.” *Id.*, at 458. On that understanding, the court recognized that, in addition to “holster pistol[s],” the right to bear arms covered the carry of “such pistols at least as are not adapted to being carried concealed.” *Id.*, at 458–459. Nonetheless, after expanding the scope of firearms that warranted state constitutional protection, *Duke* held that requiring any pistol-bearer to have “‘reasonable grounds fearing an unlawful attack on [one’s] person’” was a “legitimate and highly proper” regulation of handgun carriage. *Id.*, at 456, 459–460. *Duke* thus concluded that the 1871 statute “appear[ed] to have respected the right to carry a pistol openly when needed for self-defense.” *Id.*, at 459.

We acknowledge that the Texas cases support New York’s proper-cause requirement, which one can analogize to Texas’ “reasonable grounds” standard. But the Texas statute, and the rationales set forth in *English* and *Duke*, are outliers. In fact, only one other State, West Virginia, adopted a similar public-carry statute before 1900. See W. Va. Code, ch. 148, §7 (1887). The West Virginia Supreme Court upheld that prohibition, reasoning that *no* handguns of any kind were protected by the Second Amendment, a rationale endorsed by no other court during this period. See *State v. Workman*, 35 W. Va. 367, 371–374, 14 S. E. 9, 11 (1891). The Texas decisions therefore provide little insight into how postbellum courts viewed the right to carry protected arms in public.

In the end, while we recognize the support that postbellum Texas provides for respondents’ view, we will not give disproportionate weight to a single state statute and a pair of state-court decisions. As in *Heller*, we will not “stake our interpretation of the Second Amendment upon a single law, in effect in a single [State], that contradicts the overwhelming weight of other evidence regarding the right to keep and

58 NEW YORK STATE RIFLE & PISTOL ASSN., INC. *v.* BRUEN

Opinion of the Court

bear arms for defense” in public. 554 U. S., at 632.

5

Finally, respondents point to the slight uptick in gun regulation during the late-19th century—principally in the Western Territories. As we suggested in *Heller*, however, late-19th-century evidence cannot provide much insight into the meaning of the Second Amendment when it contradicts earlier evidence. See *id.*, at 614; *supra*, at 28.²⁸ Here, moreover, respondents’ reliance on late-19th-century laws has several serious flaws even beyond their temporal distance from the founding.

The vast majority of the statutes that respondents invoke come from the Western Territories. Two Territories prohibited the carry of pistols in towns, cities, and villages, but seemingly permitted the carry of rifles and other long guns everywhere. See 1889 Ariz. Terr. Sess. Laws no. 13, §1, p. 16; 1869 N. M. Laws ch. 32, §§1–2, p. 72.²⁹ Two others prohibited the carry of *all* firearms in towns, cities, and villages, including long guns. See 1875 Wyo. Terr. Sess. Laws ch. 52, §1; 1889 Idaho Terr. Gen. Laws §1, p. 23. And one Territory completely prohibited public carry of pistols *everywhere*, but allowed the carry of “shot-guns or rifles” for certain purposes. See 1890 Okla. Terr. Stats., Art. 47, §§1–2, 5, p. 495.

These territorial restrictions fail to justify New York’s

²⁸We will not address any of the 20th-century historical evidence brought to bear by respondents or their *amici*. As with their late-19th-century evidence, the 20th-century evidence presented by respondents and their *amici* does not provide insight into the meaning of the Second Amendment when it contradicts earlier evidence.

²⁹The New Mexico restriction allowed an exception for individuals carrying for “the lawful defence of themselves, their families or their property, and the same being then and there threatened with danger.” 1869 Terr. of N. M. Laws ch. 32, §1, p. 72. The Arizona law similarly exempted those who have “reasonable ground for fearing an unlawful attack upon his person.” 1889 Ariz. Terr. Sess. Laws no. 13, §2, p. 17.

Cite as: 597 U. S. ____ (2022)

59

Opinion of the Court

proper-cause requirement for several reasons. First, the bare existence of these localized restrictions cannot overcome the overwhelming evidence of an otherwise enduring American tradition permitting public carry. For starters, “[t]he very transitional and temporary character of the American [territorial] system” often “permitted legislative improvisations which might not have been tolerated in a permanent setup.” E. Pomeroy, *The Territories and the United States 1861–1890*, p. 4 (1947). These territorial “legislative improvisations,” which conflict with the Nation’s earlier approach to firearm regulation, are most unlikely to reflect “the origins and continuing significance of the Second Amendment” and we do not consider them “instructive.” *Heller*, 554 U. S., at 614.

The exceptional nature of these western restrictions is all the more apparent when one considers the miniscule territorial populations who would have lived under them. To put that point into perspective, one need not look further than the 1890 census. Roughly 62 million people lived in the United States at that time. Arizona, Idaho, New Mexico, Oklahoma, and Wyoming combined to account for only 420,000 of those inhabitants—about two-thirds of 1% of the population. See Dept. of Interior, *Compendium of the Eleventh Census: 1890, Part I.—Population 2* (1892). Put simply, these western restrictions were irrelevant to more than 99% of the American population. We have already explained that we will not stake our interpretation of the Second Amendment upon a law in effect in a single State, or a single city, “that contradicts the overwhelming weight of other evidence regarding the right to keep and bear arms” in public for self-defense. *Heller*, 554 U. S., at 632; see *supra*, at 57–58. Similarly, we will not stake our interpretation on a handful of temporary territorial laws that were enacted nearly a century after the Second Amendment’s adoption, governed less than 1% of the American population, and also “contradict[t] the overwhelming weight” of

60 NEW YORK STATE RIFLE & PISTOL ASSN., INC. v. BRUEN

Opinion of the Court

other, more contemporaneous historical evidence. *Heller*, 554 U. S., at 632.

Second, because these territorial laws were rarely subject to judicial scrutiny, we do not know the basis of their perceived legality. When States generally prohibited both open and concealed carry of handguns in the late-19th century, state courts usually upheld the restrictions when they exempted army revolvers, or read the laws to exempt at least that category of weapons. See, e.g., *Haile v. State*, 38 Ark. 564, 567 (1882); *Wilson v. State*, 33 Ark. 557, 560 (1878); *Fife v. State*, 31 Ark. 455, 461 (1876); *State v. Wilburn*, 66 Tenn. 57, 60 (1872); *Andrews*, 50 Tenn., at 187.³⁰ Those state courts that upheld broader prohibitions without qualification generally operated under a fundamental misunderstanding of the right to bear arms, as expressed in *Heller*. For example, the Kansas Supreme Court upheld a complete ban on public carry enacted by the city of Salina in 1901 based on the rationale that the Second Amendment protects only “the right to bear arms as a member of the state militia, or some other military organization provided for by law.” *Salina v. Blaksley*, 72 Kan. 230, 232, 83 P. 619, 620 (1905). That was clearly erroneous. See *Heller*, 554 U. S., at 592.

Absent any evidence explaining *why* these unprecedented prohibitions on *all* public carry were understood to comport with the Second Amendment, we fail to see how they inform “the origins and continuing significance of the Amendment.” *Id.*, at 614; see also *The Federalist* No. 37,

³⁰ Many other state courts during this period continued the antebellum tradition of upholding concealed carry regimes that seemingly provided for open carry. See, e.g., *State v. Speller*, 86 N. C. 697 (1882); *Chateaux v. State*, 52 Ala. 388 (1875); *Eslava v. State*, 49 Ala. 355 (1873); *State v. Shelby*, 90 Mo. 302, 2 S. W. 468 (1886); *Carroll v. State*, 28 Ark. 99 (1872); cf. *Robertson v. Baldwin*, 165 U. S. 275, 281–282 (1897) (remarking in dicta that “the right of the people to keep and bear arms . . . is not infringed by laws prohibiting the carrying of concealed weapons”).

Opinion of the Court

at 229 (explaining that the meaning of ambiguous constitutional provisions can be “liquidated and ascertained by a series of particular discussions and adjudications” (emphasis added)).

Finally, these territorial restrictions deserve little weight because they were—consistent with the transitory nature of territorial government—short lived. Some were held unconstitutional shortly after passage. See *In re Brickey*, 8 Idaho 597, 70 P. 609 (1902). Others did not survive a Territory’s admission to the Union as a State. See Wyo. Rev. Stat., ch. 3, §5051 (1899) (1890 law enacted upon statehood prohibiting public carry only when combined with “intent, or avowed purpose, of injuring [one’s] fellow-man”). Thus, they appear more as passing regulatory efforts by not-yet-mature jurisdictions on the way to statehood, rather than part of an enduring American tradition of state regulation.

Beyond these Territories, respondents identify one Western State—Kansas—that instructed cities with more than 15,000 inhabitants to pass ordinances prohibiting the public carry of firearms. See 1881 Kan. Sess. Laws §§1, 23, pp. 79, 92.³¹ By 1890, the only cities meeting the population threshold were Kansas City, Topeka, and Wichita. See Compendium of the Eleventh Census: 1890, at 442–452. Even if each of these three cities enacted prohibitions by 1890, their combined population (93,000) accounted for only 6.5% of Kansas’ total population. *Ibid.* Although other Kansas cities may also have restricted public carry unilaterally,³² the lone late-19th-century state law respondents

³¹In 1875, Arkansas prohibited the public carry of all pistols. See 1875 Ark. Acts p. 156, §1. But this categorical prohibition was also short lived. About six years later, Arkansas exempted “pistols as are used in the army or navy of the United States,” so long as they were carried “uncovered, and in [the] hand.” 1881 Ark. Acts p. 191, no. 96, §§1, 2.

³²In 1879, Salina, Kansas, prohibited the carry of pistols but broadly exempted “cases when any person carrying [a pistol] is engaged in the pursuit of any lawful business, calling or employment” and the circumstances were “such as to justify a prudent man in carrying such weapon,

62 NEW YORK STATE RIFLE & PISTOL ASSN., INC. v. BRUEN

Opinion of the Court

identify does not prove that Kansas meaningfully restricted public carry, let alone demonstrate a broad tradition of States doing so.

* * *

At the end of this long journey through the Anglo-American history of public carry, we conclude that respondents have not met their burden to identify an American tradition justifying the State’s proper-cause requirement. The Second Amendment guaranteed to “all Americans” the right to bear commonly used arms in public subject to certain reasonable, well-defined restrictions. *Heller*, 554 U. S., at 581. Those restrictions, for example, limited the intent for which one could carry arms, the manner by which one carried arms, or the exceptional circumstances under which one could not carry arms, such as before justices of the peace and other government officials. Apart from a few late-19th-century outlier jurisdictions, American governments simply have not broadly prohibited the public carry of commonly used firearms for personal defense. Nor, subject to a few late-in-time outliers, have American governments required law-abiding, responsible citizens to “demonstrate a special need for self-protection distinguishable from that of the general community” in order to carry arms in public. *Klenosky*, 75 App. Div., at 793, 428 N. Y. S. 2d, at 257.

IV

The constitutional right to bear arms in public for self-defense is not “a second-class right, subject to an entirely different body of rules than the other Bill of Rights guarantees.” *McDonald*, 561 U. S., at 780 (plurality opinion). We know of no other constitutional right that an individual may exercise only after demonstrating to government offic-

for the defense of his person, property or family.” Salina, Kan., Rev. Ordinance No. 268, §2.

Cite as: 597 U. S. ____ (2022)

63

Opinion of the Court

ers some special need. That is not how the First Amendment works when it comes to unpopular speech or the free exercise of religion. It is not how the Sixth Amendment works when it comes to a defendant's right to confront the witnesses against him. And it is not how the Second Amendment works when it comes to public carry for self-defense.

New York's proper-cause requirement violates the Fourteenth Amendment in that it prevents law-abiding citizens with ordinary self-defense needs from exercising their right to keep and bear arms. We therefore reverse the judgment of the Court of Appeals and remand the case for further proceedings consistent with this opinion.

It is so ordered.

Cite as: 597 U. S. ____ (2022)

1

ALITO, J., concurring

SUPREME COURT OF THE UNITED STATES

No. 20–843

NEW YORK STATE RIFLE & PISTOL ASSOCIATION,
INC., ET AL., PETITIONERS *v.* KEVIN P. BRUEN, IN
HIS OFFICIAL CAPACITY AS SUPERINTENDENT
OF NEW YORK STATE POLICE, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE SECOND CIRCUIT

[June 23, 2022]

JUSTICE ALITO, concurring.

I join the opinion of the Court in full but add the following
comments in response to the dissent.

I

Much of the dissent seems designed to obscure the specific question that the Court has decided, and therefore it may be helpful to provide a succinct summary of what we have actually held. In *District of Columbia v. Heller*, 554 U. S. 570 (2008), the Court concluded that the Second Amendment protects the right to keep a handgun in the home for self-defense. *Heller* found that the Amendment codified a preexisting right and that this right was regarded at the time of the Amendment’s adoption as rooted in “the natural right of resistance and self-preservation.” *Id.*, at 594. “[T]he inherent right of self-defense,” *Heller* explained, is “central to the Second Amendment right.” *Id.*, at 628.

Although *Heller* concerned the possession of a handgun in the home, the key point that we decided was that “the people,” not just members of the “militia,” have the right to use a firearm to defend themselves. And because many people face a serious risk of lethal violence when they venture

2 NEW YORK STATE RIFLE & PISTOL ASSN., INC. v. BRUEN

ALITO, J., concurring

outside their homes, the Second Amendment was understood at the time of adoption to apply under those circumstances. The Court's exhaustive historical survey establishes that point very clearly, and today's decision therefore holds that a State may not enforce a law, like New York's Sullivan Law, that effectively prevents its law-abiding residents from carrying a gun for this purpose.

That is all we decide. Our holding decides nothing about who may lawfully possess a firearm or the requirements that must be met to buy a gun. Nor does it decide anything about the kinds of weapons that people may possess. Nor have we disturbed anything that we said in *Heller* or *McDonald v. Chicago*, 561 U. S. 742 (2010), about restrictions that may be imposed on the possession or carrying of guns.

In light of what we have actually held, it is hard to see what legitimate purpose can possibly be served by most of the dissent's lengthy introductory section. See *post*, at 1–8 (opinion of BREYER, J.). Why, for example, does the dissent think it is relevant to recount the mass shootings that have occurred in recent years? *Post*, at 4–5. Does the dissent think that laws like New York's prevent or deter such atrocities? Will a person bent on carrying out a mass shooting be stopped if he knows that it is illegal to carry a handgun outside the home? And how does the dissent account for the fact that one of the mass shootings near the top of its list took place in Buffalo? The New York law at issue in this case obviously did not stop that perpetrator.

What is the relevance of statistics about the use of guns to commit suicide? See *post*, at 5–6. Does the dissent think that a lot of people who possess guns in their homes will be stopped or deterred from shooting themselves if they cannot lawfully take them outside?

The dissent cites statistics about the use of guns in domestic disputes, see *post*, at 5, but it does not explain why these statistics are relevant to the question presented in

Cite as: 597 U. S. ____ (2022)

3

ALITO, J., concurring

this case. How many of the cases involving the use of a gun in a domestic dispute occur outside the home, and how many are prevented by laws like New York's?

The dissent cites statistics on children and adolescents killed by guns, see *post*, at 1, 4, but what does this have to do with the question whether an adult who is licensed to possess a handgun may be prohibited from carrying it outside the home? Our decision, as noted, does not expand the categories of people who may lawfully possess a gun, and federal law generally forbids the possession of a handgun by a person who is under the age of 18, 18 U. S. C. §§922(x)(2)–(5), and bars the sale of a handgun to anyone under the age of 21, §§922(b)(1), (c)(1).¹

The dissent cites the large number of guns in private hands—nearly 400 million—but it does not explain what this statistic has to do with the question whether a person who already has the right to keep a gun in the home for self-

¹The dissent makes no effort to explain the relevance of most of the incidents and statistics cited in its introductory section (*post*, at 1–8) (opinion of BREYER, J.). Instead, it points to studies (summarized later in its opinion) regarding the effects of “shall issue” licensing regimes on rates of homicide and other violent crimes. I note only that the dissent’s presentation of such studies is one-sided. See RAND Corporation, *Effects of Concealed-Carry Laws on Violent Crime* (Apr. 22, 2022), <https://www.rand.org/research/gun-policy/analysis/concealed-carry/violent-crime.html>; see also Brief for William English et al. as *Amici Curiae* 3 (“The overwhelming weight of statistical analysis on the effects of [right-to-carry] laws on violent crime concludes that RTC laws do not result in any statistically significant increase in violent crime rates”); Brief for Arizona et al. as *Amici Curiae* 12 (“[P]opulation-level data on licensed carry is extensive, and the weight of the evidence confirms that objective, non-discriminatory licensed-carry laws have two results: (1) statistically significant reductions in some types of violent crime, or (2) no statistically significant effect on overall violent crime”); Brief for Law Enforcement Groups et al. as *Amici Curiae* 12 (“[O]ver the period 1991–2019 the inventory of firearms more than doubled; the number of concealed carry permits increased by at least sevenfold,” but “murder rates fell by almost half, from 9.8 per 100,000 people in 1991 to 5.0 per 100,000 in 2019” and “[v]iolent crimes plummeted by over half”).

4 NEW YORK STATE RIFLE & PISTOL ASSN., INC. *v.* BRUEN

ALITO, J., concurring

defense is likely to be deterred from acquiring a gun by the knowledge that the gun cannot be carried outside the home. See *post*, at 3. And while the dissent seemingly thinks that the ubiquity of guns and our country's high level of gun violence provide reasons for sustaining the New York law, the dissent appears not to understand that it is these very facts that cause law-abiding citizens to feel the need to carry a gun for self-defense.

No one apparently knows how many of the 400 million privately held guns are in the hands of criminals, but there can be little doubt that many muggers and rapists are armed and are undeterred by the Sullivan Law. Each year, the New York City Police Department (NYPD) confiscates thousands of guns,² and it is fair to assume that the number of guns seized is a fraction of the total number held unlawfully. The police cannot disarm every person who acquires a gun for use in criminal activity; nor can they provide bodyguard protection for the State's nearly 20 million residents or the 8.8 million people who live in New York City. Some of these people live in high-crime neighborhoods. Some must traverse dark and dangerous streets in order to reach their homes after work or other evening activities. Some are members of groups whose members feel especially vulnerable. And some of these people reasonably believe that unless they can brandish or, if necessary, use a handgun in the case of attack, they may be murdered, raped, or suffer some other serious injury.

Ordinary citizens frequently use firearms to protect

²NYPD statistics show approximately 6,000 illegal guns were seized in 2021. A. Southall, *This Police Captain's Plan To Stop Gun Violence Uses More Than Handcuffs*, N. Y. Times, Feb. 4, 2022. According to recent remarks by New York City Mayor Eric Adams, the NYPD has confiscated 3,000 firearms in 2022 so far. City of New York, Transcript: Mayor Eric Adams Makes Announcement About NYPD Gun Violence Suppression Division (June 6, 2022), <https://www1.nyc.gov/office-of-the-mayor/news/369-22/transcript-mayor-eric-adams-makes-announcement-nypd-gun-violence-suppression-division>.

Cite as: 597 U. S. ____ (2022)

5

ALITO, J., concurring

themselves from criminal attack. According to survey data, defensive firearm use occurs up to 2.5 million times per year. Brief for Law Enforcement Groups et al. as *Amici Curiae* 5. A Centers for Disease Control and Prevention report commissioned by former President Barack Obama reviewed the literature surrounding firearms use and noted that “[s]tudies that directly assessed the effect of actual defensive uses of guns . . . have found consistently lower injury rates among gun-using crime victims compared with victims who used other self-protective strategies.” Institute of Medicine and National Research Council, *Priorities for Research To Reduce the Threat of Firearm-Related Violence* 15–16 (2013) (referenced in Brief for Independent Women’s Law Center as *Amicus Curiae* 19–20).

Many of the *amicus* briefs filed in this case tell the story of such people. Some recount incidents in which a potential victim escaped death or serious injury only because carrying a gun for self-defense was allowed in the jurisdiction where the incident occurred. Here are two examples. One night in 1987, Austin Fulk, a gay man from Arkansas, “was chatting with another man in a parking lot when four gay bashers charged them with baseball bats and tire irons. Fulk’s companion drew his pistol from under the seat of his car, brandished it at the attackers, and fired a single shot over their heads, causing them to flee and saving the would-be victims from serious harm.” Brief for DC Project Foundation et al. as *Amici Curiae* 31 (footnote omitted).

On July 7, 2020, a woman was brutally assaulted in the parking lot of a fast food restaurant in Jefferson City, Tennessee. Her assailant slammed her to the ground and began to drag her around while strangling her. She was saved when a bystander who was lawfully carrying a pistol pointed his gun at the assailant, who then stopped the assault and the assailant was arrested. *Ibid.* (citing C. Wethington, *Jefferson City Police: Legally Armed Good Samaritan Stops Assault*, ABC News 6, WATE.com (July 9, 2020),

6 NEW YORK STATE RIFLE & PISTOL ASSN., INC. v. BRUEN

ALITO, J., concurring

<https://www.wate.com/news/local-news/jefferson-city-police-legally-armed-good-samaritan-stops-assault/>).

In other incidents, a law-abiding person was driven to violate the Sullivan Law because of fear of victimization and as a result was arrested, prosecuted, and incarcerated. See Brief for Black Attorneys of Legal Aid et al. as *Amici Curiae* 22–25.

Some briefs were filed by members of groups whose members feel that they have special reasons to fear attacks. See Brief for Asian Pacific American Gun Owners Association as *Amicus Curiae*; Brief for DC Project Foundation et al. as *Amici Curiae*; Brief for Black Guns Matter et al. as *Amici Curiae*; Brief for Independent Women’s Law Center as *Amicus Curiae*; Brief for National African American Gun Association, Inc., as *Amicus Curiae*.

I reiterate: All that we decide in this case is that the Second Amendment protects the right of law-abiding people to carry a gun outside the home for self-defense and that the Sullivan Law, which makes that virtually impossible for most New Yorkers, is unconstitutional.

II

This brings me to Part II–B of the dissent, *post*, at 11–21, which chastises the Court for deciding this case without a trial and factual findings about just how hard it is for a law-abiding New Yorker to get a carry permit. The record before us, however, tells us everything we need on this score. At argument, New York’s solicitor general was asked about an ordinary person who works at night and must walk through dark and crime-infested streets to get home. Tr. of Oral Arg. 66–67. The solicitor general was asked whether such a person would be issued a carry permit if she pleaded: “[T]here have been a lot of muggings in this area, and I am scared to death.” *Id.*, at 67. The solicitor general’s candid answer was “in general,” no. *Ibid.* To get a permit, the applicant would have to show more—for example, that she

Cite as: 597 U. S. ____ (2022)

7

ALITO, J., concurring

had been singled out for attack. *Id.*, at 65; see also *id.*, at 58. A law that dictates that answer violates the Second Amendment.

III

My final point concerns the dissent's complaint that the Court relies too heavily on history and should instead approve the sort of "means-end" analysis employed in this case by the Second Circuit. Under that approach, a court, in most cases, assesses a law's burden on the Second Amendment right and the strength of the State's interest in imposing the challenged restriction. See *post*, at 20. This mode of analysis places no firm limits on the ability of judges to sustain any law restricting the possession or use of a gun. Two examples illustrate the point.

The first is the Second Circuit's decision in a case the Court decided two Terms ago, *New York State Rifle & Pistol Assn., Inc. v. City of New York*, 590 U. S. ____ (2020). The law in that case affected New York City residents who had been issued permits to keep a gun in the home for self-defense. The city recommended that these permit holders practice at a range to ensure that they are able to handle their guns safely, but the law prohibited them from taking their guns to any range other than the seven that were spread around the city's five boroughs. Even if such a person unloaded the gun, locked it in the trunk of a car, and drove to the nearest range, that person would violate the law if the nearest range happened to be outside city limits. The Second Circuit held that the law was constitutional, concluding, among other things, that the restriction was substantially related to the city's interests in public safety and crime prevention. See *New York State Rifle & Pistol Assn., Inc. v. New York*, 883 F. 3d 45, 62–64 (2018). But after we agreed to review that decision, the city repealed the law and admitted that it did not actually have any beneficial effect on public safety. See N. Y. Penal Law Ann.

8 NEW YORK STATE RIFLE & PISTOL ASSN., INC. v. BRUEN

ALITO, J., concurring

§400.00(6) (West Cum. Supp. 2022); Suggestion of Mootness in *New York State Rifle & Pistol Assn., Inc. v. City of New York*, O. T. 2019, No. 18–280, pp. 5–7.

Exhibit two is the dissent filed in *Heller* by JUSTICE BREYER, the author of today’s dissent. At issue in *Heller* was an ordinance that made it impossible for any District of Columbia resident to keep a handgun in the home for self-defense. See 554 U. S., at 574–575. Even the respondent, who carried a gun on the job while protecting federal facilities, did not qualify. *Id.*, at 575–576. The District of Columbia law was an extreme outlier; only a few other jurisdictions in the entire country had similar laws. Nevertheless, JUSTICE BREYER’s dissent, while accepting for the sake of argument that the Second Amendment protects the right to keep a handgun in the home, concluded, based on essentially the same test that today’s dissent defends, that the District’s complete ban was constitutional. See *id.*, at 689, 722 (under “an interest-balancing inquiry. . .” the dissent would “conclude that the District’s measure is a proportionate, not a disproportionate, response to the compelling concerns that led the District to adopt it”).

Like that dissent in *Heller*, the real thrust of today’s dissent is that guns are bad and that States and local jurisdictions should be free to restrict them essentially as they see fit.³ That argument was rejected in *Heller*, and while the dissent protests that it is not rearguing *Heller*, it proceeds to do just that. See *post*, at 25–28.

Heller correctly recognized that the Second Amendment

³If we put together the dissent in this case and JUSTICE BREYER’s *Heller* dissent, States and local governments would essentially be free to ban the possession of all handguns, and it is unclear whether its approach would impose any significant restrictions on laws regulating long guns. The dissent would extend a very large measure of deference to legislation implicating Second Amendment rights, but it does not claim that such deference is appropriate when any other constitutional right is at issue.

Cite as: 597 U. S. ____ (2022)

9

ALITO, J., concurring

codifies the right of ordinary law-abiding Americans to protect themselves from lethal violence by possessing and, if necessary, using a gun. In 1791, when the Second Amendment was adopted, there were no police departments, and many families lived alone on isolated farms or on the frontiers. If these people were attacked, they were on their own. It is hard to imagine the furor that would have erupted if the Federal Government and the States had tried to take away the guns that these people needed for protection.

Today, unfortunately, many Americans have good reason to fear that they will be victimized if they are unable to protect themselves. And today, no less than in 1791, the Second Amendment guarantees their right to do so.

Cite as: 597 U. S. ____ (2022)

1

KAVANAUGH, J., concurring

SUPREME COURT OF THE UNITED STATES

No. 20–843

NEW YORK STATE RIFLE & PISTOL ASSOCIATION,
INC., ET AL., PETITIONERS *v.* KEVIN P. BRUEN, IN
HIS OFFICIAL CAPACITY AS SUPERINTENDENT
OF NEW YORK STATE POLICE, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE SECOND CIRCUIT

[June 23, 2022]

JUSTICE KAVANAUGH, with whom THE CHIEF JUSTICE
joins, concurring.

The Court employs and elaborates on the text, history, and tradition test that *Heller* and *McDonald* require for evaluating whether a government regulation infringes on the Second Amendment right to possess and carry guns for self-defense. See *District of Columbia v. Heller*, 554 U. S. 570 (2008); *McDonald v. Chicago*, 561 U. S. 742 (2010). Applying that test, the Court correctly holds that New York’s outlier “may-issue” licensing regime for carrying handguns for self-defense violates the Second Amendment.

I join the Court’s opinion, and I write separately to underscore two important points about the limits of the Court’s decision.

First, the Court’s decision does not prohibit States from imposing licensing requirements for carrying a handgun for self-defense. In particular, the Court’s decision does not affect the existing licensing regimes—known as “shall-issue” regimes—that are employed in 43 States.

The Court’s decision addresses only the unusual discretionary licensing regimes, known as “may-issue” regimes, that are employed by 6 States including New York. As the

2 NEW YORK STATE RIFLE & PISTOL ASSN., INC. v. BRUEN

KAVANAUGH, J., concurring

Court explains, New York’s outlier may-issue regime is constitutionally problematic because it grants open-ended discretion to licensing officials and authorizes licenses only for those applicants who can show some special need apart from self-defense. Those features of New York’s regime—the unchanneled discretion for licensing officials and the special-need requirement—in effect deny the right to carry handguns for self-defense to many “ordinary, law-abiding citizens.” *Ante*, at 1; see also *Heller*, 554 U. S., at 635. The Court has held that “individual self-defense is ‘the *central component*’ of the Second Amendment right.” *McDonald*, 561 U. S., at 767 (quoting *Heller*, 554 U. S., at 599). New York’s law is inconsistent with the Second Amendment right to possess and carry handguns for self-defense.

By contrast, 43 States employ objective shall-issue licensing regimes. Those shall-issue regimes may require a license applicant to undergo fingerprinting, a background check, a mental health records check, and training in firearms handling and in laws regarding the use of force, among other possible requirements. Brief for Arizona et al. as *Amici Curiae* 7. Unlike New York’s may-issue regime, those shall-issue regimes do not grant open-ended discretion to licensing officials and do not require a showing of some special need apart from self-defense. As petitioners acknowledge, shall-issue licensing regimes are constitutionally permissible, subject of course to an as-applied challenge if a shall-issue licensing regime does not operate in that manner in practice. Tr. of Oral Arg. 50–51.

Going forward, therefore, the 43 States that employ objective shall-issue licensing regimes for carrying handguns for self-defense may continue to do so. Likewise, the 6 States including New York potentially affected by today’s decision may continue to require licenses for carrying handguns for self-defense so long as those States employ objective licensing requirements like those used by the 43 shall-issue States.

Cite as: 597 U. S. ____ (2022)

3

KAVANAUGH, J., concurring

Second, as *Heller* and *McDonald* established and the Court today again explains, the Second Amendment “is neither a regulatory straightjacket nor a regulatory blank check.” *Ante*, at 21. Properly interpreted, the Second Amendment allows a “variety” of gun regulations. *Heller*, 554 U. S., at 636. As Justice Scalia wrote in his opinion for the Court in *Heller*, and JUSTICE ALITO reiterated in relevant part in the principal opinion in *McDonald*:

“Like most rights, the right secured by the Second Amendment is not unlimited. From Blackstone through the 19th-century cases, commentators and courts routinely explained that the right was not a right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose. . . . [N]othing in our opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons and the mentally ill, or laws forbidding the carrying of firearms in sensitive places such as schools and government buildings, or laws imposing conditions and qualifications on the commercial sale of arms. [Footnote 26: We identify these presumptively lawful regulatory measures only as examples; our list does not purport to be exhaustive.]

“We also recognize another important limitation on the right to keep and carry arms. *Miller* said, as we have explained, that the sorts of weapons protected were those in common use at the time. We think that limitation is fairly supported by the historical tradition of prohibiting the carrying of dangerous and unusual weapons.” *Heller*, 554 U. S., at 626–627, and n. 26 (citations and quotation marks omitted); see also *McDonald*, 561 U. S., at 786 (plurality opinion).

* * *

With those additional comments, I join the opinion of the Court.

Cite as: 597 U. S. ____ (2022)

1

BARRETT, J., concurring

SUPREME COURT OF THE UNITED STATES

No. 20–843

NEW YORK STATE RIFLE & PISTOL ASSOCIATION,
INC., ET AL., PETITIONERS *v.* KEVIN P. BRUEN, IN
HIS OFFICIAL CAPACITY AS SUPERINTENDENT
OF NEW YORK STATE POLICE, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE SECOND CIRCUIT

[June 23, 2022]

JUSTICE BARRETT, concurring.

I join the Court’s opinion in full. I write separately to highlight two methodological points that the Court does not resolve. First, the Court does not conclusively determine the manner and circumstances in which postratification practice may bear on the original meaning of the Constitution. See *ante*, at 24–29. Scholars have proposed competing and potentially conflicting frameworks for this analysis, including liquidation, tradition, and precedent. See, e.g., Nelson, Originalism and Interpretive Conventions, 70 U. Chi. L. Rev. 519 (2003); McConnell, Time, Institutions, and Interpretation, 95 B. U. L. Rev. 1745 (2015). The limits on the permissible use of history may vary between these frameworks (and between different articulations of each one). To name just a few unsettled questions: How long after ratification may subsequent practice illuminate original public meaning? Cf. *McCulloch v. Maryland*, 4 Wheat. 316, 401 (1819) (citing practice “introduced at a very early period of our history”). What form must practice take to carry weight in constitutional analysis? See *Myers v. United States*, 272 U. S. 52, 175 (1926) (citing a “legislative exposition of the Constitution . . . acquiesced in for a long term of years”). And may practice settle the meaning of individual

2 NEW YORK STATE RIFLE & PISTOL ASSN., INC. v. BRUEN

BARRETT, J., concurring

rights as well as structural provisions? See Baude, *Constitutional Liquidation*, 71 *Stan. L. Rev.* 1, 49–51 (2019) (canvassing arguments). The historical inquiry presented in this case does not require us to answer such questions, which might make a difference in another case. See *ante*, at 17–19.

Second and relatedly, the Court avoids another “ongoing scholarly debate on whether courts should primarily rely on the prevailing understanding of an individual right when the Fourteenth Amendment was ratified in 1868” or when the Bill of Rights was ratified in 1791. *Ante*, at 29. Here, the lack of support for New York’s law in either period makes it unnecessary to choose between them. But if 1791 is the benchmark, then New York’s appeals to Reconstruction-era history would fail for the independent reason that this evidence is simply too late (in addition to too little). Cf. *Espinoza v. Montana Dept. of Revenue*, 591 U. S. ___, ___–___ (2020) (slip op., at 15–16) (a practice that “arose in the second half of the 19th century . . . cannot by itself establish an early American tradition” informing our understanding of the First Amendment). So today’s decision should not be understood to endorse freewheeling reliance on historical practice from the mid-to-late 19th century to establish the original meaning of the Bill of Rights. On the contrary, the Court is careful to caution “against giving postenactment history more weight than it can rightly bear.” *Ante*, at 26.

Cite as: 597 U. S. ____ (2022)

1

BREYER, J., dissenting

SUPREME COURT OF THE UNITED STATES

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NEW YORK STATE RIFLE & PISTOL ASSOCIATION,
INC., ET AL., PETITIONERS *v.* KEVIN P. BRUEN, IN
HIS OFFICIAL CAPACITY AS SUPERINTENDENT
OF NEW YORK STATE POLICE, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE SECOND CIRCUIT

[June 23, 2022]

JUSTICE BREYER, with whom JUSTICE SOTOMAYOR and
JUSTICE KAGAN join, dissenting.

In 2020, 45,222 Americans were killed by firearms. See Centers for Disease Control and Prevention, Fast Facts: Firearm Violence Prevention (last updated May 4, 2022) (CDC, Fast Facts), <https://www.cdc.gov/violenceprevention/firearms/fastfact.html>. Since the start of this year (2022), there have been 277 reported mass shootings—an average of more than one per day. See Gun Violence Archive (last visited June 20, 2022), <https://www.gunviolencearchive.org>. Gun violence has now surpassed motor vehicle crashes as the leading cause of death among children and adolescents. J. Goldstick, R. Cunningham, & P. Carter, Current Causes of Death in Children and Adolescents in the United States, 386 *New England J. Med.* 1955 (May 19, 2022) (Goldstick).

Many States have tried to address some of the dangers of gun violence just described by passing laws that limit, in various ways, who may purchase, carry, or use firearms of different kinds. The Court today severely burdens States' efforts to do so. It invokes the Second Amendment to strike down a New York law regulating the public carriage of con-

2 NEW YORK STATE RIFLE & PISTOL ASSN., INC. v. BRUEN

BREYER, J., dissenting

cealed handguns. In my view, that decision rests upon several serious mistakes.

First, the Court decides this case on the basis of the pleadings, without the benefit of discovery or an evidentiary record. As a result, it may well rest its decision on a mistaken understanding of how New York’s law operates in practice. Second, the Court wrongly limits its analysis to focus nearly exclusively on history. It refuses to consider the government interests that justify a challenged gun regulation, regardless of how compelling those interests may be. The Constitution contains no such limitation, and neither do our precedents. Third, the Court itself demonstrates the practical problems with its history-only approach. In applying that approach to New York’s law, the Court fails to correctly identify and analyze the relevant historical facts. Only by ignoring an abundance of historical evidence supporting regulations restricting the public carriage of firearms can the Court conclude that New York’s law is not “consistent with the Nation’s historical tradition of firearm regulation.” See *ante*, at 15.

In my view, when courts interpret the Second Amendment, it is constitutionally proper, indeed often necessary, for them to consider the serious dangers and consequences of gun violence that lead States to regulate firearms. The Second Circuit has done so and has held that New York’s law does not violate the Second Amendment. See *Kachalsky v. County of Westchester*, 701 F.3d 81, 97–99, 101 (2012). I would affirm that holding. At a minimum, I would not strike down the law based only on the pleadings, as the Court does today—without first allowing for the development of an evidentiary record and without considering the State’s compelling interest in preventing gun violence. I respectfully dissent.

I

The question before us concerns the extent to which the

Cite as: 597 U. S. ____ (2022)

3

BREYER, J., dissenting

Second Amendment prevents democratically elected officials from enacting laws to address the serious problem of gun violence. And yet the Court today purports to answer that question without discussing the nature or severity of that problem.

In 2017, there were an estimated 393.3 million civilian-held firearms in the United States, or about 120 firearms per 100 people. A. Karp, Estimating Global Civilian-Held Firearms Numbers, Small Arms Survey 4 (June 2018), <https://www.smallarmssurvey.org/sites/default/files/resources/SAS-BP-Civilian-Firearms-Numbers.pdf>. That is more guns per capita than in any other country in the world. *Ibid.* (By comparison, Yemen is second with about 52.8 firearms per 100 people—less than half the per capita rate in the United States—and some countries, like Indonesia and Japan, have fewer than one firearm per 100 people. *Id.*, at 3–4.)

Unsurprisingly, the United States also suffers a disproportionately high rate of firearm-related deaths and injuries. Cf. Brief for Educational Fund To Stop Gun Violence et al. as *Amici Curiae* 17–18 (Brief for Educational Fund) (citing studies showing that, within the United States, “states that rank among the highest in gun ownership also rank among the highest in gun deaths” while “states with lower rates of gun ownership have lower rates of gun deaths”). In 2015, approximately 36,000 people were killed by firearms nationwide. M. Siegel et al., Easiness of Legal Access to Concealed Firearm Permits and Homicide Rates in the United States, 107 Am. J. Pub. Health 1923 (2017). Of those deaths, 22,018 (or about 61%) were suicides, 13,463 (37%) were homicides, and 489 (1%) were unintentional injuries. *Ibid.* On top of that, firearms caused an average of 85,694 emergency room visits for nonfatal injuries each year between 2009 and 2017. E. Kaufman et al., Epidemiological Trends in Fatal and Nonfatal Firearm Injuries in the US, 2009–2017, 181 JAMA Internal Medicine

4 NEW YORK STATE RIFLE & PISTOL ASSN., INC. v. BRUEN

BREYER, J., dissenting

237 (2021) (Kaufman).

Worse yet, gun violence appears to be on the rise. By 2020, the number of firearm-related deaths had risen to 45,222, CDC, Fast Facts, or by about 25% since 2015. That means that, in 2020, an average of about 124 people died from gun violence every day. *Ibid.* As I mentioned above, gun violence has now become the leading cause of death in children and adolescents, surpassing car crashes, which had previously been the leading cause of death in that age group for over 60 years. Goldstick 1955; J. Bates, Guns Became the Leading Cause of Death for American Children and Teens in 2020, *Time*, Apr. 27, 2022, <https://www.time.com/6170864/cause-of-death-children-guns/>. And the consequences of gun violence are borne disproportionately by communities of color, and Black communities in particular. See CDC, Age-Adjusted Rates of Firearm-Related Homicide, by Race, Hispanic Origin, and Sex—National Vital Statistics System, United States, 2019, at 1491 (Oct. 22, 2021), <https://www.cdc.gov/mmwr/volumes/70/wr/pdfs/mm7042a6-H.pdf> (documenting 34.9 firearm-related homicides per 100,000 population for non-Hispanic Black men in 2019, compared to 7.7 such homicides per 100,000 population for men of all races); S. Kegler et al., CDC, *Vital Signs: Changes in Firearm Homicide and Suicide Rates—United States, 2019–2020*, at 656–658 (May 13, 2022), <https://www.cdc.gov/mmwr/volumes/71/wr/pdfs/mm7119e1-H.pdf>.

The dangers posed by firearms can take many forms. Newspapers report mass shootings occurring at an entertainment district in Philadelphia, Pennsylvania (3 dead and 11 injured); an elementary school in Uvalde, Texas (21 dead); a supermarket in Buffalo, New York (10 dead and 3 injured); a series of spas in Atlanta, Georgia (8 dead); a busy street in an entertainment district of Dayton, Ohio (9 dead and 17 injured); a nightclub in Orlando, Florida (50 dead and 53 injured); a church in Charleston, South Carolina (9 dead); a movie theater in Aurora, Colorado (12 dead and 50

Cite as: 597 U. S. ____ (2022)

5

BREYER, J., dissenting

injured); an elementary school in Newtown, Connecticut (26 dead); and many, many more. See, *e.g.*, R. Todt, 3 Dead, 11 Wounded in Philadelphia Shooting on Busy Street, *Washington Post*, June 5, 2022; A. Hernández, J. Slater, D. Barrett, & S. Foster-Frau, At Least 19 Children, 2 Teachers Killed at Texas Elementary School, *Washington Post*, May 25, 2022; A. Joly, J. Slater, D. Barrett, & A. Hernandez, 10 Killed in Racially Motivated Shooting at Buffalo Grocery Store, *Washington Post*, May 14, 2022; C. McWhirter & V. Bauerlein, Atlanta-Area Shootings at Spas Leave Eight Dead, *Wall Street Journal*, Mar. 17, 2021; A. Hassan, Dayton Gunman Shot 26 People in 32 Seconds, Police Timeline Reveals, *N. Y. Times*, Aug. 13, 2019; L. Alvarez & R. Pérez-Peña, Orlando Gunman Attacks Gay Nightclub, Leaving 50 Dead, *N. Y. Times*, June 12, 2016; J. Horowitz, N. Corasanti, & A. Southall, Nine Killed in Shooting at Black Church in Charleston, *N. Y. Times*, June 17, 2015; R. Lin, Gunman Kills 12 at ‘Dark Knight Rises’ Screening in Colorado, *L. A. Times*, July 20, 2012; J. Barron, Nation Reels After Gunman Massacres 20 Children at School in Connecticut, *N. Y. Times*, Dec. 14, 2012. Since the start of this year alone (2022), there have already been 277 reported mass shootings—an average of more than one per day. Gun Violence Archive; see also Gun Violence Archive, General Methodology, <https://www.gunviolencearchive.org/methodology> (defining mass shootings to include incidents in which at least four victims are shot, not including the shooter).

And mass shootings are just one part of the problem. Easy access to firearms can also make many other aspects of American life more dangerous. Consider, for example, the effect of guns on road rage. In 2021, an average of 44 people each month were shot and either killed or wounded in road rage incidents, double the annual average between 2016 and 2019. S. Burd-Sharps & K. Bistline, Everytown for Gun Safety, Reports of Road Rage Shootings Are on the Rise (Apr. 4, 2022), <https://www.everytownresearch.org/reports->

6 NEW YORK STATE RIFLE & PISTOL ASSN., INC. v. BRUEN

BREYER, J., dissenting

of-road-rage-shootings-are-on-the-rise/; see also J. Donohue, A. Aneja, & K. Weber, Right-to-Carry Laws and Violent Crime: A Comprehensive Assessment Using Panel Data and a State-Level Synthetic Control Analysis, 16 J. Empirical Legal Studies 198, 204 (2019). Some of those deaths might have been avoided if there had not been a loaded gun in the car. See *ibid.*; Brief for American Bar Association as *Amicus Curiae* 17–18; Brief for Educational Fund 20–23 (citing studies showing that the presence of a firearm is likely to increase aggression in both the person carrying the gun and others who see it).

The same could be said of protests: A study of 30,000 protests between January 2020 and June 2021 found that armed protests were nearly six times more likely to become violent or destructive than unarmed protests. Everytown for Gun Safety, Armed Assembly: Guns, Demonstrations, and Political Violence in America (Aug. 23, 2021), <https://www.everytownresearch.org/report/armed-assembly-guns-demonstrations-and-political-violence-in-america/> (finding that 16% of armed protests turned violent, compared to less than 3% of unarmed protests). Or domestic disputes: Another study found that a woman is five times more likely to be killed by an abusive partner if that partner has access to a gun. Brief for Educational Fund 8 (citing A. Zeoli, R. Malinski, & B. Turchan, Risks and Targeted Interventions: Firearms in Intimate Partner Violence, 38 Epidemiologic Revs. 125 (2016); J. Campbell et al., Risk Factors for Femicide in Abusive Relationships: Results From a Multisite Case Control Study, 93 Am. J. Pub. Health 1089, 1092 (2003)). Or suicides: A study found that men who own handguns are three times as likely to commit suicide than men who do not and women who own handguns are seven times as likely to commit suicide than women who do not. D. Studdert et al., Handgun Ownership and Suicide in California, 382 New England J. Med. 2220, 2224 (June 4, 2020).

Cite as: 597 U. S. ____ (2022)

7

BREYER, J., dissenting

Consider, too, interactions with police officers. The presence of a gun in the hands of a civilian poses a risk to both officers and civilians. *Amici* prosecutors and police chiefs tell us that most officers who are killed in the line of duty are killed by firearms; they explain that officers in States with high rates of gun ownership are three times as likely to be killed in the line of duty as officers in States with low rates of gun ownership. Brief for Prosecutors Against Gun Violence as *Amicus Curiae* 23–24; Brief for Former Major City Police Chiefs as *Amici Curiae* 13–14, and n. 21, (citing D. Swedler, M. Simmons, F. Dominici, & D. Hemenway, Firearm Prevalence and Homicides of Law Enforcement Officers in the United States, 105 Am. J. Pub. Health 2042, 2045 (2015)). They also say that States with the highest rates of gun ownership report four times as many fatal shootings of civilians by police officers compared to States with the lowest rates of gun ownership. Brief for Former Major City Police Chiefs as *Amici Curiae* 16 (citing D. Hemenway, D. Azrael, A. Connor, & M. Miller, Variation in Rates of Fatal Police Shootings Across US States: The Role of Firearm Availability, 96 J. Urb. Health 63, 67 (2018)).

These are just some examples of the dangers that firearms pose. There is, of course, another side to the story. I am not simply saying that “guns are bad.” See *ante*, at 8 (ALITO, J., concurring). Some Americans use guns for legitimate purposes, such as sport (*e.g.*, hunting or target shooting), certain types of employment (*e.g.*, as a private security guard), or self-defense. Cf. *ante*, at 4–6 (ALITO, J., concurring). Balancing these lawful uses against the dangers of firearms is primarily the responsibility of elected bodies, such as legislatures. It requires consideration of facts, statistics, expert opinions, predictive judgments, relevant values, and a host of other circumstances, which together make decisions about how, when, and where to regulate guns more appropriately legislative work. That consideration counsels modesty and restraint on the part of judges

8 NEW YORK STATE RIFLE & PISTOL ASSN., INC. v. BRUEN

BREYER, J., dissenting

when they interpret and apply the Second Amendment.

Consider, for one thing, that different types of firearms may pose different risks and serve different purposes. The Court has previously observed that handguns, the type of firearm at issue here, “are the most popular weapon chosen by Americans for self-defense in the home.” *District of Columbia v. Heller*, 554 U. S. 570, 629 (2008). But handguns are also the most popular weapon chosen by perpetrators of violent crimes. In 2018, 64.4% of firearm homicides and 91.8% of nonfatal firearm assaults were committed with a handgun. Dept. of Justice, Bureau of Justice Statistics, G. Kena & J. Truman, Trends and Patterns in Firearm Violence, 1993–2018, pp. 5–6 (Apr. 2022). Handguns are also the most commonly stolen type of firearm—63% of burglaries resulting in gun theft between 2005 and 2010 involved the theft of at least one handgun. Dept. of Justice, Bureau of Justice Statistics, L. Langton, Firearms Stolen During Household Burglaries and Other Property Crimes, 2005–2010, p. 3 (Nov. 2012).

Or consider, for another thing, that the dangers and benefits posed by firearms may differ between urban and rural areas. See generally Brief for City of Chicago et al. as *Amici Curiae* (detailing particular concerns about gun violence in large cities). Firearm-related homicides and assaults are significantly more common in urban areas than rural ones. For example, from 1999 to 2016, 89.8% of the 213,175 firearm-related homicides in the United States occurred in “metropolitan” areas. M. Siegel et al., The Impact of State Firearm Laws on Homicide Rates in Suburban and Rural Areas Compared to Large Cities in the United States, 1991–2016, 36 J. Rural Health 255 (2020); see also Brief for Partnership for New York City as *Amicus Curiae* 10; Kaufman 237 (finding higher rates of fatal assault injuries from firearms in urban areas compared to rural areas); C. Branas, M. Nance, M. Elliott, T. Richmond, & C. Schwab, Urban-Rural Shifts in Intentional Firearm Death: Different

Cite as: 597 U. S. ____ (2022)

9

BREYER, J., dissenting

Causes, Same Results, 94 Am. J. Pub. Health 1750, 1752 (2004) (finding higher rates of firearm homicide in urban counties compared to rural counties).

JUSTICE ALITO asks why I have begun my opinion by reviewing some of the dangers and challenges posed by gun violence and what relevance that has to today's case. *Ante*, at 2–4 (concurring opinion). All of the above considerations illustrate that the question of firearm regulation presents a complex problem—one that should be solved by legislatures rather than courts. What kinds of firearm regulations should a State adopt? Different States might choose to answer that question differently. They may face different challenges because of their different geographic and demographic compositions. A State like New York, which must account for the roughly 8.5 million people living in the 303 square miles of New York City, might choose to adopt different (and stricter) firearms regulations than States like Montana or Wyoming, which do not contain any city remotely comparable in terms of population or density. See U. S. Census Bureau, Quick Facts: New York City (last updated July 1, 2021) (Quick Facts: New York City), <https://www.census.gov/quickfacts/newyorkcitynewyork/>; Brief for City of New York as *Amicus Curiae* 8, 22. For a variety of reasons, States may also be willing to tolerate different degrees of risk and therefore choose to balance the competing benefits and dangers of firearms differently.

The question presented in this case concerns the extent to which the Second Amendment restricts different States (and the Federal Government) from working out solutions to these problems through democratic processes. The primary difference between the Court's view and mine is that I believe the Amendment allows States to take account of the serious problems posed by gun violence that I have just described. I fear that the Court's interpretation ignores these significant dangers and leaves States without the ability to address them.

10 NEW YORK STATE RIFLE & PISTOL ASSN., INC. v. BRUEN

BREYER, J., dissenting

II

A

New York State requires individuals to obtain a license in order to carry a concealed handgun in public. N. Y. Penal Law Ann. §400.00(2) (West Cum. Supp. 2022). I address the specifics of that licensing regime in greater detail in Part II–B below. Because, at this stage in the proceedings, the parties have not had an opportunity to develop the evidentiary record, I refer to facts and representations made in petitioners’ complaint and in *amicus* briefs filed before us.

Under New York’s regime, petitioners Brandon Koch and Robert Nash have obtained restricted licenses that permit them to carry a concealed handgun for certain purposes and at certain times and places. They wish to expand the scope of their licenses so that they can carry a concealed handgun without restriction.

Koch and Nash are residents of Rensselaer County, New York. Koch lives in Troy, a town of about 50,000, located eight miles from New York’s capital city of Albany, which has a population of about 98,000. See App. 100; U. S. Census Bureau, Quick Facts: Troy City, New York (last updated July 1, 2021), <https://www.census.gov/quickfacts/troycitynewyork>; *id.*, Albany City, New York, <https://www.census.gov/quickfacts/albanycitynewyork>. Nash lives in Averill Park, a small town 12.5 miles from Albany. App. 100.

Koch and Nash each applied for a license to carry a concealed handgun. Both were issued restricted licenses that allowed them to carry handguns only for purposes of hunting and target shooting. *Id.*, at 104, 106. But they wanted “unrestricted” licenses that would allow them to carry concealed handguns “for personal protection and all lawful purposes.” *Id.*, at 112; see also *id.*, at 40. They wrote to the licensing officer in Rensselaer County—Justice Richard

Cite as: 597 U. S. ____ (2022)

11

BREYER, J., dissenting

McNally, a justice of the New York Supreme Court—requesting that the hunting and target shooting restrictions on their licenses be removed. *Id.*, at 40, 111–113. After holding individual hearings for each petitioner, Justice McNally denied their requests. *Id.*, at 31, 41, 105, 107, 114. He clarified that, in addition to hunting and target shooting, Koch and Nash could “carry concealed for purposes of off road back country, outdoor activities similar to hunting, for example fishing, hiking & camping.” *Id.*, at 41, 114. He also permitted Koch, who was employed by the New York Court System’s Division of Technology, to “carry to and from work.” *Id.*, at 111, 114. But he reaffirmed that Nash was prohibited from carrying a concealed handgun in locations “typically open to and frequented by the general public.” *Id.*, at 41. Neither Koch nor Nash alleges that he appealed Justice McNally’s decision. Brief for Respondents 13; see App. 122–126.

Instead, petitioners Koch and Nash, along with the New York State Rifle & Pistol Association, Inc., brought this lawsuit in federal court against Justice McNally and other State representatives responsible for enforcing New York’s firearms laws. Petitioners claimed that the State’s refusal to modify Koch’s and Nash’s licenses violated the Second Amendment. The District Court dismissed their complaint. It followed Second Circuit precedent holding that New York’s licensing regime was constitutional. See *Kachalsky*, 701 F. 3d, at 101. The Court of Appeals for the Second Circuit affirmed. We granted certiorari to review the constitutionality of “New York’s denial of petitioners’ license applications.” *Ante*, at 8 (majority opinion).

B

As the Court recognizes, New York’s licensing regime traces its origins to 1911, when New York enacted the “Sullivan Law,” which prohibited public carriage of handguns without a license. See 1911 N. Y. Laws ch. 195, §1, p. 443.

12 NEW YORK STATE RIFLE & PISTOL ASSN., INC. v. BRUEN

BREYER, J., dissenting

Two years later in 1913, New York amended the law to establish substantive standards for the issuance of a license. See 1913 N. Y. Laws ch. 608, §1, pp. 1627–1629. Those standards have remained the foundation of New York’s licensing regime ever since—a regime that the Court now, more than a century later, strikes down as unconstitutional.

As it did over 100 years ago, New York’s law today continues to require individuals to obtain a license before carrying a concealed handgun in public. N. Y. Penal Law Ann. §400.00(2); *Kachalsky*, 701 F.3d, at 85–86. Because the State does not allow the open carriage of handguns at all, a concealed-carry license is the only way to legally carry a handgun in public. *Id.*, at 86. This licensing requirement applies only to handguns (*i.e.*, “pistols and revolvers”) and short-barreled rifles and shotguns, not to all types of firearms. *Id.*, at 85. For instance, the State does not require a license to carry a long gun (*i.e.*, a rifle or a shotgun over a certain length) in public. *Ibid.*; §265.00(3) (West 2022).

To obtain a concealed-carry license for a handgun, an applicant must satisfy certain eligibility criteria. Among other things, he must generally be at least 21 years old and of “good moral character.” §400.00(1). And he cannot have been convicted of a felony, dishonorably discharged from the military, or involuntarily committed to a mental hygiene facility. *Ibid.* If these and other eligibility criteria are satisfied, New York law provides that a concealed-carry license “shall be issued” to individuals working in certain professions, such as judges, corrections officers, or messengers of a “banking institution or express company.” §400.00(2). Individuals who satisfy the eligibility criteria but do not work in one of these professions may still obtain a concealed-carry license, but they must additionally show that “proper cause exists for the issuance thereof.” §400.00(2)(f).

The words “proper cause” may appear on their face to be

Cite as: 597 U. S. ____ (2022)

13

BREYER, J., dissenting

broad, but there is “a substantial body of law instructing licensing officials on the application of this standard.” *Id.*, at 86. New York courts have interpreted proper cause “to include carrying a handgun for target practice, hunting, or self-defense.” *Ibid.* When an applicant seeks a license for target practice or hunting, he must show “a sincere desire to participate in target shooting and hunting.” *Ibid.* (quoting *In re O’Connor*, 154 Misc. 2d 694, 697, 585 N. Y. S. 2d 1000, 1003 (Westchester Cty. 1992)). When an applicant seeks a license for self-defense, he must show “a special need for self-protection distinguishable from that of the general community.” 701 F. 3d, at 86 (quoting *In re Klenosky*, 75 App. Div. 2d 793, 793, 428 N. Y. S. 2d 256, 257 (1980)). Whether an applicant meets these proper cause standards is determined in the first instance by a “licensing officer in the city or county . . . where the applicant resides.” §400.00(3). In most counties, the licensing officer is a local judge. *Kachalsky*, 701 F. 3d, at 87, n. 6. For example, in Rensselaer County, the licensing officer who denied petitioners’ requests to remove the restrictions on their licenses was a justice of the New York Supreme Court. App. 31. If the officer denies an application, the applicant can obtain judicial review under Article 78 of New York’s Civil Practice Law and Rules. *Kachalsky*, 701 F. 3d, at 87. New York courts will then review whether the denial was arbitrary and capricious. *Ibid.*

In describing New York’s law, the Court recites the above facts but adds its own gloss. It suggests that New York’s licensing regime gives licensing officers too much discretion and provides too “limited” judicial review of their decisions, *ante*, at 4; that the proper cause standard is too “demanding,” *ante*, at 3; and that these features make New York an outlier compared to the “vast majority of States,” *ante*, at 4. But on what evidence does the Court base these characterizations? Recall that this case comes to us at the pleading stage. The parties have not had an opportunity to conduct

14 NEW YORK STATE RIFLE & PISTOL ASSN., INC. v. BRUEN

BREYER, J., dissenting

discovery, and no evidentiary hearings have been held to develop the record. See App. 15–26. Thus, at this point, there is no record to support the Court’s negative characterizations, as we know very little about how the law has actually been applied on the ground.

Consider each of the Court’s criticisms in turn. First, the Court says that New York gives licensing officers too much discretion and “leaves applicants little recourse if their local licensing officer denies a permit.” *Ante*, at 4. But there is nothing unusual about broad statutory language that can be given more specific content by judicial interpretation. Nor is there anything unusual or inadequate about subjecting licensing officers’ decisions to arbitrary-and-capricious review. Judges routinely apply that standard, for example, to determine whether an agency action is lawful under both New York law and the Administrative Procedure Act. See, e.g., N. Y. Civ. Prac. Law Ann. §7803(3) (2021); 5 U. S. C. §706(2)(A). The arbitrary-and-capricious standard has thus been used to review important policies concerning health, safety, and immigration, to name just a few examples. See, e.g., *Biden v. Missouri*, 595 U. S. ___, ___ (2022) (*per curiam*) (slip op., at 8); *Department of Homeland Security v. Regents of Univ. of Cal.*, 591 U. S. ___, ___, ___ (2020) (slip op., at 9, 17); *Department of Commerce v. New York*, 588 U. S. ___, ___ (2019) (slip op., at 16); *Motor Vehicle Mfrs. Assn. of United States, Inc. v. State Farm Mut. Automobile Ins. Co.*, 463 U. S. 29, 41, 46 (1983).

Without an evidentiary record, there is no reason to assume that New York courts applying this standard fail to provide license applicants with meaningful review. And there is no evidentiary record to support the Court’s assumption here. Based on the pleadings alone, we cannot know how often New York courts find the denial of a concealed-carry license to be arbitrary and capricious or on what basis. We do not even know how a court would have reviewed the licensing officer’s decisions in Koch’s and

Cite as: 597 U. S. ____ (2022)

15

BREYER, J., dissenting

Nash’s cases because they do not appear to have sought judicial review at all. See Brief for Respondents 13; App. 122–126.

Second, the Court characterizes New York’s proper cause standard as substantively “demanding.” *Ante*, at 3. But, again, the Court has before it no evidentiary record to demonstrate how the standard has actually been applied. How “demanding” is the proper cause standard in practice? Does that answer differ from county to county? How many license applications are granted and denied each year? At the pleading stage, we do not know the answers to these and other important questions, so the Court’s characterization of New York’s law may very well be wrong.

In support of its assertion that the law is “demanding,” the Court cites only to cases originating in New York City. *Ibid.* (citing *In re Martinek*, 294 App. Div. 2d 221, 743 N. Y. S. 2d 80 (2002) (New York County, *i.e.*, Manhattan); *In re Kaplan*, 249 App. Div. 2d 199, 673 N. Y. S. 2d 66 (1998) (same); *In re Klenosky*, 75 App. Div. 2d 793, 428 N. Y. S. 2d 256 (same); *In re Bernstein*, 85 App. Div. 2d 574, 445 N. Y. S. 2d 716 (1981) (Bronx County)). But cases from New York City may not accurately represent how the proper cause standard is applied in other parts of the State, including in Rensselaer County where petitioners reside.

To the contrary, *amici* tell us that New York’s licensing regime is purposefully flexible: It allows counties and cities to respond to the particular needs and challenges of each area. See Brief for American Bar Association as *Amicus Curiae* 12; Brief for City of New York as *Amicus Curiae* 20–29. *Amici* suggest that some areas may interpret words such as “proper cause” or “special need” more or less strictly, depending upon each area’s unique circumstances. See *ibid.* New York City, for example, reports that it “has applied the [proper cause] requirement relatively rigorously” because its densely populated urban areas pose a heightened risk of gun violence. Brief for City of New York

16 NEW YORK STATE RIFLE & PISTOL ASSN., INC. v. BRUEN

BREYER, J., dissenting

as *Amicus Curiae* 20. In comparison, other (perhaps more rural) counties “have tailored the requirement to their own circumstances, often issuing concealed-carry licenses more freely than the City.” *Ibid.*; see also *In re O’Connor*, 154 Misc. 2d, at 698, 585 N. Y. S. 2d, at 1004 (“The circumstances which exist in New York City are significantly different than those which exist in Oswego or Putnam Counties. . . . The licensing officers in each county are in the best position to determine whether any interest of the population of their county is furthered by the use of restrictions on pistol licenses”); Brief for Citizens Crime Commission of New York City as *Amicus Curiae* 18–19. Given the geographic variation across the State, it is too sweeping for the Court to suggest, without an evidentiary record, that the proper cause standard is “demanding” in Rensselaer County merely because it may be so in New York City.

Finally, the Court compares New York’s licensing regime to that of other States. *Ante*, at 4–6. It says that New York’s law is a “may issue” licensing regime, which the Court describes as a law that provides licensing officers greater discretion to grant or deny licenses than a “shall issue” licensing regime. *Ante*, at 4–5. Because the Court counts 43 “shall issue” jurisdictions and only 7 “may issue” jurisdictions, it suggests that New York’s law is an outlier. *Ibid.*; see also *ante*, at 1–2 (KAVANAUGH, J., concurring). Implicitly, the Court appears to ask, if so many other States have adopted the more generous “shall issue” approach, why can New York not be required to do the same?

But the Court’s tabulation, and its implicit question, overlook important context. In drawing a line between “may issue” and “shall issue” licensing regimes, the Court ignores the degree of variation within and across these categories. Not all “may issue” regimes are necessarily alike, nor are all “shall issue” regimes. Conversely, not all “may issue” regimes are as different from the “shall issue” re-

BREYER, J., dissenting

gimes as the Court assumes. For instance, the Court recognizes in a footnote that three States (Connecticut, Delaware, and Rhode Island) have statutes with discretionary criteria, like so-called “may issue” regimes do. *Ante*, at 5, n. 1. But the Court nonetheless counts them among the 43 “shall issue” jurisdictions because, it says, these three States’ laws operate in practice more like “shall issue” regimes. *Ibid.*; see also Brief for American Bar Association as *Amicus Curiae* 10 (recognizing, conversely, that some “shall issue” States, *e.g.*, Alabama, Colorado, Georgia, Oregon, and Virginia, still grant some degree of discretion to licensing authorities).

As these three States demonstrate, the line between “may issue” and “shall issue” regimes is not as clear cut as the Court suggests, and that line depends at least in part on how statutory discretion is applied in practice. Here, because the Court strikes down New York’s law without affording the State an opportunity to develop an evidentiary record, we do not know how much discretion licensing officers in New York have in practice or how that discretion is exercised, let alone how the licensing regimes in the other six “may issue” jurisdictions operate.

Even accepting the Court’s line between “may issue” and “shall issue” regimes and assuming that its tally (7 “may issue” and 43 “shall issue” jurisdictions) is correct, that count does not support the Court’s implicit suggestion that the seven “may issue” jurisdictions are somehow outliers or anomalies. The Court’s count captures only a snapshot in time. It forgets that “shall issue” licensing regimes are a relatively recent development. Until the 1980s, “may issue” regimes predominated. See *id.*, at 9; R. Grossman & S. Lee, *May Issue Versus Shall Issue: Explaining the Pattern of Concealed-Carry Handgun Laws, 1960–2001*, 26 *Contemp. Econ. Pol’y* 198, 200 (2008) (Grossman). As of 1987, 16 States and the District of Columbia prohibited concealed